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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

DAIRYMEN'S LEAGUE CO-OPERATIVE ASSOCIATION, INC.,
APPELLANT

v.

ROCK ROYAL CO-OPERATIVE, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE APPELLANT, DAIRYMEN'S LEAGUE CO-OPERATIVE ASSOCIATION, INC.

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BRIEF FOR THE APPELLANT, DAIRYMEN'S LEAGUE CO-OPERATIVE ASSOCIATION, INC.

Two opinions were rendered by the District Court. The first (R. 105) was rendered upon the denial of certain motions made by the United States to strike designated portions of the answers of three of the defendants. The second opinion (R. 743) was rendered after the trial on the merits. Neither opinion is as yet reported.

Jurisdiction

Jurisdiction of the Court rests on Section 2 of the Act of August 24, 1937, Chapter 754, Sec. 2, 50 Stat. 752 (28 U.S.C. Sec. 349-a). The decree of the District Court was entered March 21, 1939. The appeal of the appellant, Dairymen's League Co-operative Association, Inc., was allowed March 21, 1939. The case was docketed in this Court on March 28th, 1939, and the Court noted probable jurisdiction on April 3rd, 1939.

The Statute and the Regulation Thereunder Involved

The statute involved is the Act of May 12, 1933, (48 Stat.

31) as amended August 24, 1935, (49 Stat. 750), and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246). Title 7, U. S. C. A., Sections 601 etc., hereinafter referred to as the Act. An annotated compilation of the Act is attached to this brief as Appendix "A".

The Regulation involved is Order No. 27, issued by the Secretary of Agriculture August 5, 1938. According to its title, the order is one "regulating such handling of milk in the New York Metropolitan area as is in interstate commerce and as directly burdens, obstructs or affects interstate commerce." A copy of order No. 27 is attached to this brief as Appendix "B".

Questions Presented

1. Whether the provisions of the Act authorizing and directing the issuance by the Secretary of Agriculture of orders regulating such handling of milk and its products as is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects interstate or foreign commerce, are a constintional exercise by Congress of the power to regulate interstate and foreign commerce.

2. Whether Section 8c (5) (B) (ii) of the Act, authorizing provisions, in orders regulating the handling of milk, for a market-wide equalization pool, as applied in Order No. 27, deprives the appellees of liberty or property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

3. Whether Section 8c (5) (F) of the Act, that a cooperative marketing association engaged in making collective sales or marketing of milk or its products for the producers thereof, shall not be prevented from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers, deprives the appellees of liberty or property with-

out due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

4. Whether the Act provides for an unlawful delegation of legislative power.

5. Whether the District Court erred in substituting its judgment for the judgment of the Secretary of Agriculture as to the reasonableness of the terms and conditions of Order No. 27, in view of its finding that substantial evidence supporting all of the findings of the Secretary of Agriculture and all the terms and conditions contained in Order No. 27, and the reasonableness thereof, was introduced at the hearing held by the Secretary of Agriculture prior to the promulgation of Order No. 27.

6. Whether the District Court erred in setting aside the determination of the Secretary of Agriculture, approved by the President, that Order No. 27 was approved by the President, that Order No. 27 was approved or favored by at least two-thirds of the producers who, during the month of May, 1938, which had been determined by the Secretary to be a representative period, had been engaged in the production of milk for sale in the marketing area specified in Order No. 27.

7. Whether all of the terms and conditions of Order No. 27 are authorized by the Act, and whether Order No. 27 is valid and enforceable.

Statement

I Proceedings Below

The position in this litigation of the appellant, Dairymen's League Cooperative Association, Inc., is explained in the history of the proceedings below.

A. Proceedings prior to intervention by the League

On October 27, 1938, the United States, pursuant to the provisions of Section 8-a (6) of the Act (Appendix "A", p. 2) commenced this action in the District Court of the

United States for the Northern District of New York, against the appellees, Rock Royal Cooperative, Inc., Central New York Cooperative Association, Inc., and Schuyler Junction Milk Shed Cooperative, Inc.

The complaint set forth that Order No. 27 was issued in accordance with the provisions of the Act, that the appellees are handlers of milk subject to Order No. 27, and refuse to comply with its provisions. The complaint sought an injunction restraining the appellees from continuing to handle milk in violation of the order and a mandatory injunction requiring them to comply with the provisions of the order (R. 9).

On November 19, 1938, Holton V. Noyes, as Commissioner of Agriculture and Markets of the State of New York, was petitioned for leave to intervene as a party plaintiff and filed a complaint substantially identical with the complaint of the United States, and sought the same relief (R. 48).

On November 23, 1938, the United States commenced an action against the appellee Jetter Dairy Company, Inc., in the same Court, making similar allegations and seeking similar relief.

On December 2, 1938, the two cases were consolidated, with the consent of all parties (R. 61).

On December 15, 1938, Holton V. Noyes, as Commissioner of Agriculture and Markets of the State of New York, having been granted leave to intervene as a party plaintiff, filed a complaint as intervening plaintiff in the consolidated cause against the defendant Jetter Dairy Company, Inc. (R. 55).

All of the appellees filed answers (R. 63). The answers of the defendants Rock Royal Cooperative, Inc., Schuyler Junction Milk Shed Cooperative, Inc., and Jetter Dairy Company, Inc., were substantially alike. In substance, these answers admitted that the order on its face complied with the provisions of the Act. The validity of the Order was

challenged on the ground that the producer-referendum was illegal and ineffective to put the order into operation; that the order and statute under which it was issued violated the Fifth Amendment. The answer of the appellee Central New York Cooperative Association, Inc., denied knowledge as to most of the allegations of the complaint challenging the validity of the Order, and the statute pursuant to which it was issued, and set up the additional defense that by reason of its form of organization it was in effect a producer and not subject to the provisions of the Order. The answers of Rock Royal Cooperative, Inc., Schuyler Junction Milk Shed Cooperative, Inc., and Jetter Dairy Company, Inc., also set up certain affirmative defenses. For convenience these will be referred to as the Jetter answer.

THE AFFIRMATIVE DEFENSES ALLEGED, IN SUBSTANCE:

1. That Order No. 27 was part of a conspiracy entered into by an organization of producer-cooperatives known as the Metropolitan Cooperative Milk Producers Bargaining Agency Inc., hereinafter called the Bargaining Agency, and the Dairymen's League Cooperative Association, Inc., and others, to destroy competitors and secure a monopoly in the fluid milk business in New York City.

2. That Order No. 27 was invalid because, prior to the referendum, the Bargaining Agency and the League carried on a campaign of false and misleading propaganda to induce producers to vote in favor of the Order.

3. That Order No. 27 is invalid because it may be used as a means of destroying competitors of the League and thereby creating a monopoly.

4. That Order No. 27 is invalid because the League and other handlers have attempted to use it as a means of destroying competitors and creating a monopoly.

The United States moved to strike these affirmative defenses on the grounds that the matters alleged and the

issues raised therein (a) failed to state a legal defense to plaintiff's claim, and (b) were redundant, immaterial, impertinent and scandalous (R. 83). Meanwhile, the Jetter Dairy Company had amended its complaint, modifying in some details the allegations contained in its affirmative defenses, and the United States moved to strike designated portions of the affirmative defenses from the amended answer on the same grounds as its motion to strike the affirmative defenses in the original answer (R. 103). The District Court denied the motion and rendered an opinion (R. 105).

B. INTERVENTION BY THE LEAGUE.

In its brief filed in support of the motion to strike, the United States had urged the need for a speedy trial and pointed out that if the affirmative defenses were allowed to stand, it would delay the trial, because the defenses related to activities of private parties the facts of which were unknown to the United States.

The Trial Judge in his opinion denying the motion, stated (R. 109) that the League and the Bargaining Agency could be made parties to the action if they desired to present any evidence but that they could only do so with the consent of the Government.

The action came to trial on the merits on December 27, 1938. At that time the League moved to intervene as a party-plaintiff and the Government stated that it welcomed the intervention. The Court granted leave to intervene and pointed out that intervention was not granted as to any financial interest in the controversy, but only upon the ground that the answers attacked the conduct of the Dairymen's League. The attorneys for the defendants did not object to the intervention. The discussion of this subject appears in the original transcript of testimony at page 4 to 11 inclusive.

During the trial a question was raised as to the proof

which the League was required to make in support of its complaint, (original transcript pages 1517-1525). The Court stated that the only occasion for the intervening plaintiffs to offer any proof was simply to aid the Government in the rebuttal of any proof the defendants introduced in support of their affirmative defenses. It was agreed by all of the parties to the action that there was nothing for the Dairymen's League or the Bargaining Agency to prove except their legal status as alleged in their complaints and that those allegations in the complaints were admitted.

The opinion of the Court (R. 776) directed costs against the Dairymen's League and the Bargaining Agency. The final decree (R. 743) carries out that direction. The final decree was entered May 21, 1939. The order allowing the appeal was entered May 21, 1939.

Specifications of Assigned Errors Intended to be Urged

The appellant's assignment of errors is identical with the assignment of errors filed by the United States. In the brief of the United States, all of these errors are urged. We see no reason to repeat the arguments therein presented.

As pointed out above, the League was brought into this lawsuit to assist the plaintiff in controverting any proof of charges of misconduct. In addition, two features of the Order are claimed to be discriminatory in favor of the League to the point of rendering the Order and Act unconstitutional. We will, therefore, limit our argument to the assigned errors relative to these three subjects.

The Court below erred:

(1). In finding without qualification, change or omission the facts stated in Findings of Fact #62, #86, #87, #96 and #97(a) (Assignment #5).

2. In making its conclusions of law numbered 1, 2, 6, 7, 9, 12, 16, 20, 21 and 31. (Assignments 6, 7 and 8).

3. In holding that the provisions of Section 8C (5) (F) of the Act which permit a co-operative association of producers to blend the net proceeds of all sales of milk in all markets and to make distribution thereof to its producers in accordance with its contract with such producers, as applied in Order No. 27, unlawfully discriminate against the appellees and operate to take the property of appellees without due process of law (Assignments 17, 28, 29, 30, 31, 32 and 33).

4. In holding that the payments out of the Producer Settlement Fund to Cooperative Association as provided for in Article VII Section 5 of Order No. 27, as invalid (Assignments 37, 38 and 39).

5. In awarding costs against the appellant (Assignment #6).

Summary of Argument

I. The findings of the Trial Court relative to the alleged conspiracy in which the League was alleged to have been engaged for the purpose of destroying proprietary milk handlers and to monopolize the New York milk market are unsupported by the evidence, are immaterial and are contrary to statute.

(a). The evidence upon which the findings were made fails to show any unlawful acts committed by the League in its efforts to have Order #27 issued. No plan to monopolize the milk industry was shown and none can be inferred from the fact that the League advocated the adoption of Order #27 and supported the order after it was issued. If the independent milk dealers are selling milk to stores in New York City at a loss, it is the result of their own competitive practices and not the result of any practices of the League.

(b). The findings and conclusions relative to conspiracy and monopoly are immaterial. It is a well-settled principle

that the courts will not inquire into the motives of an administrative officer in the issuance of an order. Order #27 was issued by the Secretary of Agriculture, a cabinet officer. If the Secretary's motives are immaterial in a proceeding to enforce the order, it follows that the motives of the League in advocating the adoption of the Order are likewise immaterial.

The statute under which the Order was issued contains a provision whereby a handler may apply to the Secretary to have the Order modified or rescinded. The defendants have confused the issues which might be raised in such a proceeding with the issues which can be raised in a proceeding to enforce the Order. The evidence that handlers of milk were attempting to use the Order as a means to effectuate a monopoly and drive competitors out of business might be material in a proceeding before the Secretary to modify or rescind the Order but not material in an action to enforce the Order.

(c). The findings and conclusions relative to conspiracy and monopoly are contrary to statutes which exempt co-operative associations from the operation of so-called Anti-trust Legislation. The findings charge the League with an attempt to create a monopoly in violation of the Clayton Act. The provisions of the Clayton Act are not constitutional guaranties; they are statutory. The League as a co-operative association is exempt from the provisions of the Clayton Act, as well as provisions of similar acts in force in the several states.

II. The statutory provisions authorizing co-operatives to pay their members a blended price rather than the uniform price provided for in the Order does not deprive the defendants of their property without due process of law. For many years it has been the policy of Congress and the

States to exempt co-operative associations from various regulations imposed upon ordinary business enterprises. Such legislation has been sustained by the Courts. The practical differences between co-operative associations and ordinary business enterprises justify the difference in treatment. The ordinary business enterprise selling milk is interested in the spread between the cost of the milk and the sales price. It is not interested in the price to producers except insofar as the price to producers affects the profit. The interests of the ordinary business enterprise are, therefore, frequently antagonistic to the interests of producers. The primary interest of a co-operative marketing association is in securing the highest possible return to producers. In doing this, incidental benefits result.

III. The co-operative differentials provided for in Article VII, Section 5 of the Order are authorized by the Act and do not deprive the defendants of their property without due process of law.

(a). The defendants are not entitled to question the legality of these payments. The payments come out of the producers' settlement fund and therefore come out of producers. The defendant Jetter is not a producer and therefore is not entitled to complain. The defendant co-operative associations are within the class entitled to the payments and likewise cannot complain.

(b). The evidence before the Secretary shows that these payments to co-operatives are necessary to maintain our system of co-operative marketing and to control surplus. Business enterprises can and do refuse to take any more milk from producers when the business enterprise has filled its requirements or when it can no longer buy and handle the milk at a profit to itself. Co-operative associations by their very nature and by their contracts with their members

continue to handle all the milk their members produce. This means an expenditure of funds to maintain facilities for the disposition of surplus milk and a willingness to handle surplus at a loss. It also means a willingness to shut down these facilities when the milk going into surplus channels is needed to balance the fluid market. The co-operative association prevents milk which has been refused by a dealer from being wasted or dumped blindly on the market to the detriment of all producers. Improved prices and conditions for the sale of milk which result from the efforts of co-operative associations improve the conditions under which all producers can sell milk. The orderly market which results from the ability and willingness of co-operative associations to take care of surplus, when there is a surplus, and to shut down manufacturing plants when the milk is needed to balance the fluid market, promote an orderly market which helps all producers. A co-operative cannot continue to perform these services unless it is reimbursed for the cost of performing them. The payments represent the reasonable cost of these services.

(c). The terms of the order providing for these payments are authorized by the Act. The payments are necessary to equalize the value of milk produced by members of co-operatives with that produced by non-members. The terms are necessary to effectuate the other provisions of the Order, the primary purpose of which is the equalization of the burden of surplus.

I

Preliminary statement as to the position of Dairymen's League Co-operative Association, Inc., in this action.

A. THE PURPOSE FOR WHICH THE LEAGUE WAS ALLOWED TO INTERVENE IN THE ACTION.

The League did not commence the action, and it did not force itself into the action. The Jetter answer attacked the validity of the Order by accusing the League of improper activities and inferentially accusing the Government of issuing the Order to let the League destroy its competitors and monopolize the market. In the motion to strike these affirmative defenses from the answer, the United States pointed out that an immediate trial was essential and that it could not readily go to trial if one of the principal issues was to be the conduct of the League, a third party. To meet this objection by the Government, the Court stated that the League could intervene as a party. Accordingly, the League moved to intervene. The Government welcomed the intervention, the defendants did not object to it and the Court granted it. It was apparent upon the trial, and the record is clear on the point, that no one claimed that the League had an independent right of action against these defendants but that intervention was solely for the purpose of facilitating proof.

The statement of the trial court on page 1525 of the original transcript to which all counsel agreed, to the effect that the League and the Bargaining Agency, had to prove nothing except their legal status and that that was admitted, was agreed to by all parties. The intervention on the part of the League, therefore, cannot be viewed as though the defendants were contesting the right to intervene. That

question has never been raised because the purpose of the intervention was to facilitate proof.

B. THE NATURE OF THE DAIRYMEN'S LEAGUE COOPERATIVE ASSOCIATION, INC.

Since the affirmative defenses in the answers largely centered around the activities and the conduct of the League, it may be well to point out briefly what the League is and its position in the milk industry.

Dairymen's League Cooperative Association, Inc., is a non-stock, non-profit cooperative association organized in 1919 under Article 13-a of the Membership Corporation Law of New York. In 1926, Article 13-a was incorporated in and made a part of the Cooperative Corporation Law of said State and the association is now subject to the provisions of Articles 4 and 6 of said law, as well as the general provisions in Articles 1 to 3 thereof. The principal office of the association is at Utica, N. Y. (R. 184).

The League now is and has been for a number of years engaged in making collective sales of milk and its products as agent for the producers thereof in interstate and also in intrastate commerce and is duly qualified to act under and is now operating under the provisions of the Act of Congress of February 18, 1922, 41 Stat. 388, (Tit. 7 U. S. C. 291-293 known as the Capper Volstead Act) (R. 185).

In August, 1938, the League operated 109 milk receiving stations in the New York Shed which were approved for shipping milk to the New York City market and 11,391 producer members of the League delivered to their plants. In addition, 8404 producer members of the League delivered milk to 65 aprpoved milk receiving stations operated by the Borden Company, a dealer purchasing milk from the League.

The League has acted as marketing agent for producers under a contract which constitutes the League the sole marketing agent of the producers. Under the contract the League has the power to process, manufacture and market the milk in fluid or manufactured form, distributing to the producers the proceeds of sale of the milk, after deducting all of its expenses. The League is authorized to blend the milk of all of its producers sold in all markets, and to pay each producer his proportional share of the net proceeds from its blend or pool fund (Ex. 42-4 of Ex. A-3).

A summary of the operations of the League is set forth at Page 2 of the Report of the Federal Trade Commission on the sale and distribution of milk and milk products in the New York Milk Sales Area, House Document No. 95 of the 75th Congress, First Session.[2]

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[2] "2. Dairymen's League Cooperative Association, Inc., the largest cooperative association of milk producers in the New York milkshed, represents about 37,500 active producers and may be termed a processing-marketing association. It has three methods of disposing of milk: (1) By selling whole milk to distributors in liquid form; (2) by distributing fluid milk at wholesale and retail directly and through its own branches and distributing subsidiaries; (3) by separating and processing milk into cream and other dairy products and selling such products.

By the terms of the membership agreement the League is appointed exclusive agent for sale or other disposition of the milk produced by its members. Producers are required to deliver milk to plants owned by the Association or to distributors' plants as directed. The Association has broad powers to sell the milk in fluid form or to process it and sell the products. Approximately 50 per cent of the milk produced by the members is handled through plants owned and operated by the Association, the balance being delivered to distributors. The proceeds of all sales, whether of fluid milk or of manufactured products, are blended into one fund and the net amount, after deducting such amounts as are needed for necessary expenses and capital investment, is distributed to the members on the basis of the quantity of milk delivered by each member to the League."

The same report at Page 29 states:

"* * * It is practically impossible, however, to evaluate all the advantages provided members through the operation of the League. For example, members are guaranteed a continuous market for all milk delivered to the Association and are not limited in the quantity they may deliver.

Obviously, it is not only the principal aim of any true co-operative association to procure for its members the highest possible price for their milk production, but it is also equally important for the co-operative to provide a market for all the milk of its members. Both these factors must be considered in measuring the success or failure of any given co-operative association."

With relation to the League's own distribution systems, the report of the "Pitcher Committee" stated at page 119: "The purchase of city business by the association was a business necessity. It is also very advantageous to the League and the consuming public."

C. THE DEVELOPMENT BY THE LEAGUE OF FACILITIES FOR THE CARE OF SURPLUS MILK.

The League maintains facilities throughout the New York Milkshed sufficient to care for the milk of its producers, but also available to other producers. At the hearings before the Secretary (Ex. A-3) a map showing the location of these facilities was introduced in evidence.

The development by the League of facilities to meet surplus requirements is a matter of interest, and was a subject of evidence at the hearing (Ex. A-3, pp. 1268, foll.). That evidence justifies the following statement: After the World War, there was an unusual surplus of milk on the market. The League invested large sums in manufacturing plants to take care of surplus so that producers would have some market. The members of the League were willing to make this expenditure of their funds, to provide a market for milk at a time when no ordinary business corporation would have dared to make the investment. A producers' organization had to make the investment or the milk of many producers would have been wasted, or the market would have been glutted with distress milk.

By 1925 marginal producers had been compelled to discontinue dairying and there was a great decrease in the number of farms producing milk in the territory. Meanwhile the League had invested hundreds of thousands of dollars not only in the manufacture, but also in the sale of

evaporated milk. The demands of the fluid milk market had come into closer alignment with production. Accordingly, arrangements were made for the discontinuance of this operation which had been a major factor in surplus disposition during the years that there had been a surplus.

By 1927 and 1928, milk production had again increased, and the problem of surplus again became troublesome. Again, at considerable expense, the League carried out an expansion in the surplus field to enable producers to market their milk.

Beginning in 1930, there was a drop in the consumption of fluid milk. Surplus increased rapidly. The League again provided facilities for the disposition of surplus.

D. THE POSITION OF THE LEAGUE AND OTHER COOPERATIVE ASSOCIATIONS AS SHOWN BY LEGISLATIVE AND ADMINISTRATIVE INVESTIGATIONS OF THE MILK INDUSTRY.

Numerous legislative and administrative investigations of the New York milk industry have been conducted.[3]

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[3] Some of these investigations are as follows:
The Joint Committee of Dairy Products, Livestock and Poultry (Wicks Committee) in 1916-17;
The Committee of Eleven in 1924:
The Ten Eyck Committee in 1926-27;
The Emergency Committee of the New York Milkshed in 1932;
The Joint Legislative Committee to Investigate the Milk Industry (Pitcher Committee) in 1933;
A series of committees culminating in the Milk Shed Conference in 1934-35;
The Conference of Farm Organizations of Four States in 1936;
The Federal Trade Commission in 1936;
The Ernst and Ernst Audit of Milk Dealers and Co-operative Associations, (1938) and
The Attorney-General of the State of New York (1938).

In the reports of all of these investigations, we find vigorous recommendation of the development of the cooperative movement of which the Dairymen's League is a leading exponent.[4]

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[4] The Wicks Committee in its report in 1917 stated at Page 887:

"For example we believe that the milk industry at the present moment needs to be handled through cooperative effort. Sometime ago, conditions reached a point on the farms, where the milk producer felt compelled to cooperate."

The Pitcher Committee Report stated at Page 17:

"Universal application of the classified price plan and control of surplus milk by the producers through effective cooperative organization appears to offer the best prospect for permanent stabilization of the dairy industry in the New York Milk Shed."

The Federal Trade Commission, in its report on the Sale and Distribution of milk and milk products, January, 1934, stated at Page 8:

"Usually it was not until producers cooperative became strong enough numerically to command the attention of distributors that price negotiations and price and production agreements became significant. Disturbed economic conditions, especially among dairy farmers were instrumental in bringing about effective cooperative groups and also in impressing upon distributors the necessity of working with such groups in an effort to bring about stable market conditions."

In its report on the New York Metropolitan Area (1936) the Federal Trade Commission stated at Page 32:

"It is practically impossible, however to evaluate all the advantages provided through the operation of the League. For example, members are guaranteed a continuous market for all milk delivered to the association and are not limited in the quantity that was delivered."

"Obviously it is not only the aim of any true cooperative association to procure for its members the higest possible price for their milk production, but is also equally important for the cooperative to provide a market for all the milk of its members. Both these factors may be considered in measuring the success or failure of any given cooperative association."

Again at Page 15 the same report states:

"Dairymen's League Cooperative Association, Inc. is a good example of non-stock, non-profit cooperative marketing association with a large investment in plants and equipment used in processing and marketing milk."

Attorney-General Bennett in his Report on the Milk Industry of the State of New York with Particular Reference to the New York Metropolitan Area, Page 55 notes:

"Only effective organization of the farmers can eliminate distributor domination of farm prices. Furthermore, affective organization of farmers of States other than New York supplying milk to the metropolitan area can stop undercelling of interstate milk with its resultant effect upon New York State prices. And finally, a producers' organization is definitely necessary in order to stop the purchase of surplus milk at surplus milk prices by distributors and its subsequent use in fluid form. * * *"

Going back to the Pitcher Committee Report, we find on Page 19 that it recommends cooperation, such as has been attacked by the defendants in this case. The recommendation is:

"Section 8. Definite action should be taken without delay, conferring upon either a joint legislative committee or a commission appointed by the Governor, the requisite authority: To further investigate and study the operation of cooperative organization; to initiate and perfect a plan and recommend remedial legislation by which a more perfect union of all milk producers both within the state and within the milk shed may be attained, and by which the States of New York, New Jersey, Pennsylvania, Maryland, Massachusetts, Vermont and Connecticut, or any two or more of them,

II.

The findings and conclusions of the Trial Court relative to the conspiracy in which the League was alleged to have been engaged for the purpose of destroying proprietary milk handlers and to monopolize the New York milk market (a) are unsupported by the evidence; (b) are immaterial, and (c) are contrary to statute.

Findings of fact numbered 86 (R. 153) and 97a (R. 160) and conclusions of law numbered 20 (R. 165) and 21 (R. 166) relate to this alleged conspiracy.

The substance of these findings is that the League planned to destroy competitors and monopolize the fluid milk business in the New York Marketing Area; that the League and the Bargaining Agency conspired to use the provisions of the act (Tit. 7 U.S.C. 608 C) and the N. Y. Rogers Allen Law (Chap. 383 of the Laws of 1937 as amended) as instruments to further the alleged monopoly, and that the purpose of Order No. 27 was to give the League and the Bargaining Agency, and handlers buying milk from them, control of the milk business in the Metropolitan Area.

The amended answers of the defendants Jetter, Rock Royal and Schuyler Junction contained affirmative defenses which tendered this issue.

A. FINDINGS OF FACT NUMBERED 86 AND 97-A AND CONCLUSIONS OF LAW NUMBERED 20 AND 21 ARE UNSUPPORTED BY THE EVIDENCE.

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constituting what is commonly known as the New York Milk Shed, may cooperate and to that end coordinate their laws and rules and regulations adopted thereunder so as to effect a fair, just, equitable and legal relation between the producer, distributor and consumer of milk and milk products, and to have power to apply to the Congress of the United States for requisite legislation to legalize such plan or for any legislation that may be necessary to be enacted by Congress under the Constitution of the United States, in order to define, adjust and make fair and equitable the relation between producers, distributors and consumers in the New York Milk Shed."

Upon the trial the proof introduced in support of these allegations in the answers seemed to be directed toward six items of conduct as follows:

1. The League sponsored and supported the Rogers-Allen Law in the New York Legislature. (Chap. 383, Laws of 1937.)

2. The League was active in the formation of Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., a corporation organized pursuant to the provisions of the Rogers-Allen Law.

3. The Bargaining Agency submitted to the Secretary of Agriculture a proposed order to regulate the handling of milk in the New York Metropolitan area. The Secretary of Agriculture held hearings on the proposed order and the League appeared at the hearings and presented "elaborately prepared evidence in book form."

4. The League and Bargaining Agency campaigned for the approval of Order 27 with false and misleading propoganda.

5. After the order was issued, the League and Bargaining Agency coerced dealers into signing an agreement to comply with Order 27. The coercion took the form of threatening to and actually withholding the milk supply of dealers who refused to sign an agreement to comply with the order.

6. The League and Bargaining Agency conspired to create a competitive situation in the sale of milk which the League and other members of the Bargaining Agency and their buying dealers could alone survive, thus leaving the League and the other members of the Bargaining Agency in control of the New York Metropolitan Market.

We submit that the proof which was introduced was insufficient to support the findings and conclusions relative to conspiracy and monopoly (findings Nos. 86 (R. 153) and

97-a (R. 160) conclusions Nos. 20 (R. 165) and 21 (R. 166).

We, therefore, discuss the proof upon which these findings and conclusions were made.

1. Sponsoring and Supporting Legislation.

The charge that the League sponsored and supported the Rogers-Allen Law in the New York State Legislature (Chap. 383, Laws of 1937) is true and was so stipulated at the trial. Finding of fact No. 69 (R. 146) States:

> "Intervening plaintiff Dairymen's League is a member of a so-called 'Farm Conference Board' being the only member of the Board engaged in the purchase and sale of milk. Said Farm Conference Board proposed and the Dairymen's League actively sponsored and supported in the New York State Legislature, a proposed Act known as the Rogers-Allen Bill, which was enacted as Chapter 383 of the 1937 Laws of the State of New York."

The "Farm Conference Board" is a Board composed of farm organizations representing substantially every type of farm activity. Dairying yields fully one-half of the total income of all farm products of New York State. It would seem to be one of the primary duties of such a Board to propose legislation which would improve the price of milk to producers. The Dairymen's League, being the largest Cooperative of milk producers in New York State, could properly be criticized if it did not actively sponsor and support milk legislation which it believed would improve the status of farmers. There is not a shred of evidence that the League or the Farm Conference Board committed a single illegal or improper act in proposing, sponsoring and supporting this legislation.

The first amendment to the United States Constitution insures the right to petition to legislative bodies for relief.

2. Organization of Bargaining Agency.

The charge that the League was active in the formation of Metropolitan Cooperative Milk Producers Bargaining Agency, Inc. is also true. Finding of fact No. 69 states:

> "Pursuant to the provisions or purported provisions of said Act, hereinafter referred to as the 'Rogers-Allen Law', the intervening plaintiff, Bargaining Agency was formed. Several Directors of the Dairymen's League acted as incorporators of said corporation and were active in the creation and organization thereof."

The Rogers-Allen Law was enacted by the New York Legislature following the breakdown of the New York Milk Control Law, due in part to the inability of New York State to control the price of milk shipped into the New York Metropolitan Market from outside the State.

The Rogers-Allen Law was a new approach to milk control. It had two main purposes; First: the Union of Cooperatives into a Producers Bargaining Agency to bargain for prices on behalf of producers, the Union of distributors into a Distributors Bargaining Agency to bargain for prices on behalf of distributors (Sec. 258-d) and the making of agreements (Sec. 258-m); Second: The creation of administrative machinery for the issuance of an order regulating prices. The members of a producers bargaining agency were to be cooperatives supplying a given market. The members of a distributors agency were to be distributors handling the distribution of milk in that market.

The intervening plaintiff Metropolitan Cooperative Milk Producers Bargaining Agency, Inc. was organized by cooperative associations pursuant to this statute. In effect, it was created by virtue of this statute. The League being a large cooperative assumed a corresponding responsibility

in the formation of the Agency. The statute contemplated such action. The League's conduct therefore was lawful.

The Producers Bargaining Agency and the Distributors Bargaining Agency were able to agree upon prices for a period of time. However, there came a time when the agencies were unable to agree on prices, and this collapse of negotiations brought into action the second purpose of the Rogers-Allen Law. That purpose was the control of prices pursuant to an order of the Commissioner of Agriculture and Markets of the State of New York. Under the State statute (Section 258-m), it was the express function of the Producers Agency to apply to the Commissioner for an order controlling prices.

The statute was broad enough to permit the Commissioner to issue an order of like character to that of Order #27. However by the express terms of the statute, (Section 258-m-6), such an order could not be promulgated for the New York Metropolitan Market until the Federal Government promulgated a like order affecting all milk moving into that market.

3. Proposal of order to regulate milk industry.

We, therefore, come to the third charge, namely, that that Bargaining Agency submitted to the Secretary of Agriculture a proposed order to regulate the handling of milk in the New York Metropolitan area; that the Secretary of Agriculture held hearings on the proposed order, and that the League appeared at the hearings and presented "elaborately prepared evidence in book form."

The charge is likewise true.

The Bargaining Agency, representing most of the producers of the State through cooperatives which were members of the Agency, was created by statute to look after the

interests of producers in bargaining for milk prices and in proposing an order for price control when bargaining efforts were frustrated.

Under the Act pursuant to which Order #27 was issued, the Secretary of Agriculture was required to have before him a proposed order before he could even call a hearing (Title 7, U.S.C., 608-c-3). The policy of the Act was to increase the price producers received for their milk. The preparation of such a proposed order required a knowledge of the milk business, particularly from the viewpoint of protection for producers. By reason of the interest of its large membership, the Bargaining Agency naturally took the lead in procuring the consideration of a solution of this problem by the Secretary of Agriculture. The Bargaining Agency, therefore, committed no unlawful act in preparing and presenting to the Secretary of Agriculture a proposed order Ex. 22, R. 476).

In all of the foregoing acts, the League and the Bargaining Agency acted in accordance with the spirit of the statute, and the recommendations of the Pitcher Committee.

Hearings were called by the Secretary on the proposed order and were held throughout the State of New York. The public hearings were exhaustive (see Ex. A-3), and no one was denied the right to present evidence against the proposed order (Finding 8, R. 129). At the close of the hearings, the hearing officer invited all interested parties to file briefs. Thereafter the Secretary promulgated Order #27. It is in principle the same as that proposed by the Agency, but there are differences in several sections, thus indicating that the Secretary of Agriculture did not adopt the proposed order. He gave heed to the evidence introduced in opposition to the proposed order. For example, Article 10, Section 5 of the proposed order contained a pro-

vision with reference to fair trade practices. Witnesses from the consumer's point of view vigorously protested against this section, and Order #27 contains no such provision. Article 4, Section 1 of the proposed order contained minimum prices for Class 1 milk of $2.20 per cwt. during the spring and early summer months, and $2.67 per cwt. during the balance of the year. Dealers introduced evidence in opposition to these proposed minimum prices, and Order #27 made material changes.

There is no claim that the League presented any false evidence at any of the hearings conducted by the Secretary of Agriculture. The charge is that it presented "elaborately prepared evidence." That was what the hearings were called for.

4. Campaigning for and advocating approval of Order No. 27.

The charge that the League and the Bargaining Agency campaigned for the approval of Order #27 with false and misleading propaganda is not true.

Before this order could become effective, the Secretary of Agriculture had to determine that it was approved by two-thirds of the producers (Title 7, U.S.C., 608-c-9). The Secretary called a referendum pursuant to 608-c-19 to aid him in making that determination.

It is a fact that the League and the Bargaining Agency openly and actively urged the approval of the order, the League in the Dairymen's League News, and the Bargaining Agency in the Bargaining Agency News, in letters, and in radio speeches.

(a) The alleged misstatement.

It is charged that these publications falsely represented the order to the producers who were to vote on it, in the following particulars:

(1) That all handlers had to pay the uniform price for milk.

(2) That all handlers had the same cost for milk sold in the marketing area.

Finding #74 (R. 149) states that the League published the following statement in the Dairymen's League News on August 16, 1938:

> "The order requires handlers to pay the uniform pool, or blended price, calculated by the market administrator, to all producers delivering milk during month unless the handler has received milk and sold it as Class 1 milk outside of the marketing area. In such an instance the handler is required to pay the uniform price to each producer on that part of the milk received which is equal to the proportion of his milk to which minimum prices are applicable.
>
> "Operation of the pool assures all handlers the same cost for milk sold in the marketing area, and assures for that milk payments to all producers at a uniform rate except for the transportation and other differentials provided."

Prior to the referendum, the Secretary of Agriculture sent to each known eligible producer a copy of the order, miscellaneous pamphlets explaining the order, and listing the polling places where producers could vote. It appears from an examination of the Dairymen's League News issued August 16, 1938, that the above statement is copied from one of these pamphlets.

It is claimed that this publication by the League was a misstatement. This statement and similar ones of like import are labeled in the findings as false and misleading propoganda. The publication is claimed to be false, in that it did not contain a statement that cooperatives could blend

the proceeds of their sales and return to their producer members a blended price which might be different from the uniform price There are several answers to this claim.

(b) The publication by the League does not attempt to describe every business practice that may be carried on under the order.

There are other things about the operation of Order #27 which are not stated in Finding #74. The publication as set forth in the finding does not state that a handler pays less for his milk if he uses it in the lower use classification. It does not state that if a handler transports his milk by his own vehicle at a lower cost than railroad rates, his cost may be lower. It does not state that a handler who sells fluid milk with a lower butter fat content than another handler has a lower cost per quart of milk.

These publications were not going to a field unfamiliar with the milk business. The position of cooperatives in the industry, the nature of classified prices based on the use to which the milk was put, and the nature of transportation and butter fat differentials were part of the knowledge of every producer. That knowledge was the setting in which any statement relative to market control must be viewed. The failure to include in a publication in the Dairymen's League News (copied verbatim from the Government pamphlets) a discussion of every item of the order and every business practice that may be carried on under it cannot be held to be a misstatement, particularly when it is noted that every producer had a copy of the order mailed by the Secretary, and knew from its language, as well as from years of experience, that cooperative expenses had to come out of the prices received by a member of a cooperative for his milk.

The right of cooperatives to pay their members the net proceeds of the sales of their milk rather then the uniform price is not a right granted by the order. It is a statutory right to which the order had to conform.

(c) The publication of Ex. 22 by the Bargaining Agency did not misrepresent the proposed order.

In this same finding #74 (R. 148) there is a quotation from a pamphlet issued by the Bargaining Agency about April 28, 1938. The booklet was entitled "Mr. Dairyman, Save this Booklet. The Plan It Explains May Save Your Farm." Although the booklet is in evidence (Ex. 22, R. 176), Finding #74 (R. 148) quotes only *two* provisions from a paragraph entitled "The fundamental requirements of the industry which this Order seeks to establish are *five* in number, viz:

> "1. An equal purchase price to be paid by all dealers for milk for the same use."
>
> "2. An equal share to each producer of the benefit of the fluid market."

The finding fails to state the other three requirements which are set forth in the booklet, namely:

> "3. An equal share by each producer in the burden of the surplus and the expenses of controlling it."
>
> "4. Reasonable contribution to those having surplus facilities for the use of them seasonally for market protection."
>
> "5. Effectuation of the foregoing principles in such a manner as will perpetuate and encourage farmers' co-operative organizations."

The finding also fails to state the following sentences on Page 6 of the booklet where attention was called to the well

known fact that the expenses of operation of a cooperative were to be deducted by each cooperative association from the price which members received. These are:

> "Each co-operative pays the expenses of the operation of its own organization. There is no charge against any producer for losses incurred, inefficiency or mismanagement in any co-operative except his one."

Reading the publications in their entirety, instead of isolating sentences from their context and background, shows that the Order was not misrepresented to producers.

(d) Every producer had a copy of the Order.

A copy of the Order was sent to each known eligible producer voter by the Secretary of Agriculture (finding 73, R. 147). A copy of the proposed order was contained in the booklet above referred to (Exhibit 22, R. 476). A copy of Order #27 was published in the Dairymen's League News a week prior to the publication of August 16th, upon which the defendants rely. The provision of the Order which recognizes the statutory right of cooperatives to pay their producer members a blended price is not obscure but is contained in Article 7, entitled "Payment to Producers",— a provision that every producer would read if he read anything on the subject.

(e) There was no evidence that anyone was misled by the publications of the League and Bargaining Agency.

Even if there were a misstatement, it could not have affected the result. Milk is not sold by a member to a cooperative. It is sold through the cooperative as agent for the producers. Members of cooperatives, who would be the only producers damaged by any such misstatement, would not be misled. Producers who were not members of

cooperatives would not be damaged and could not complain. The defendants in this case are not producers and have no ground for complaint.

It is significant that with the mass of irrelevant testimony offered by the defendants upon the trial, no attempt was made to prove that any producer was misled by any statement that was made. Not a single one of over sixty thousand producers was sworn as a witness to so testify. No attempt was made to prove that any producer would have voted otherwise. The contrary findings of the court (No. 77, R. 150) is not sustained by any evidence in this case.

(f) A misstatement would not affect the validity of the Order.

A misstatement as to the meaning of the order in the publications of the League and Bargaining Agency would have no effect upon the validity of the Order. Under Section 608 c-9 of the Act, before an order could be issued, the Secretary, with the approval of the President, was required to determine that the order was approved or favored by two-thirds of the producers. Under Section 608 c-19 of the Act, the Secretary was empowered to conduct a referendum to aid him in making that determination. He made that determination with the approval of the President. He had before him the fact that copies of the Order had been sent to every known eligible producer. He had before him the result of the referendum in which 38,627 valid votes were cast of which 33,663 were in favor of the order (finding No. 78, R. 150). This evidence upon which the Secretary made the determination that the order was favored by two-thirds of the producers was clearly sufficient to support that determination, regardless of any misstatement that might have influenced the vote. The finding of the Trial Judge (finding No. 79, R. 150) to the contrary is erroneous

5. Withholding milk to compel handlers to agree to comply with Order No. 27.

The fifth charge is that the Bargaining Agency and the League coerced distributors into signing an agreement to comply with the order. The form of coercion was withholding milk from dealers who would not comply.

Order No. 27 became effective September 1st, 1938. It was a matter of common knowledge that non-compliance by a large number of dealers would make the order unworkable until its validity had been settled by judicial decision. The Secretary of Agriculture, therefore, proposed that dealers sign an agreement to voluntarily comply with the order with the right on the part of the dealer to withdraw upon thirty days' notice. Most of the dealers readily agreed to comply. Some refused. Cooperatives delivering their milk to noncomplying dealers withheld their milk until these dealers signed an agreement to comply with the order. The Bargaining Agency encouraged this action and supplied its member cooperatives with information furnished by the Market Administrator as to whether or not their respective dealers were complying with the order.

Finding No. 92 states that milk which was so withheld was chiefly diverted to the League, which acted in concert and in cooperation with E. Manning Gaynor, an employee of the Department of Agriculture and Markets of the State of New York. There is no evidence to sustain such a finding. The evidence merely was that the League was willing to receive such milk.

Order No. 27 has the effect of law. It was adopted for the benefit of producers. Producers' organizations exerted economic pressure upon dealers to make them comply with the order. Neither the United States of America nor any person for whose acts the United States might be respon-

sible, put any pressure, economic or otherwise, upon dealers to make them comply with the order. The only activity of the United States of America in forcing compliance with the order has been the prosecution of this action.

It is inconceivable that the action of private parties in applying economic pressure upon violators can detract from the validity of an otherwise valid administrative order, especially when there is no evidence that economic pressure was put upon the defendants.

6. The competitive situation in New York City after September 1, 1938, the effective date of the order.

The sixth charge is that the League conspired to create a competitive situation which it and its buying dealers alone could survive, thus leaving it in control of the New York Metropolitan Market. It is claimed that the League attempted to drive the defendants out of business by cutting prices of milk in the Metropolitan Market.

(a) The business defendant Jetter claims was lost to the League.

Defendants' finding of fact No. 62 (R. 145) relates to one Weintraub, a grocery store owner located at 744 Fox Street, New York. The finding states:

> "64. On September 1, 1938, the Jetter Dairy Co. had been selling to one Weintraub, 30 cases of milk daily, at 9¾¢ per quart. On September 4, 1938, intervening plaintiff, Dairymen's League solicited said account, and by selling at 9¢ per quart, acquired 10 cases of said trade. Gold Medal Farms, Inc., by same price cutting, as the League, on same day also acquired 10 cases of said trade. In order to retain the balance of 10 cases of such trade, Jetter Dairy Company was compelled to, and did, reduce its price to 9¢ per quart on September 5, 1938."

The finding is totally unsupported by any evidence insofar as it relates to alleged price cutting by the League.

The testimony as to the Weintraub business was given by one Samuel Rootstein, an employee of the defendant Jetter (R. 388). It appeared that about July 1st, 1938, the League bought the milk routes of Lincoln Farms, Inc. Weintraub was a customer of Lincoln Farms and bought eight cases of milk a day. During the forepart of August, 1938, Triborough Milk & Cream Company was selling Weintraub about fifteen cases of milk a day. About August 15th, 1938, Triborough took all of the Weintraub business, amounting to about thirty cases per day. *It was selling milk for five to seven cents per quart, at that time.* On September 4th, 1938, Weintraub bought ten cases from Triborough, ten cases from Gold Medal Farms, and ten cases from the League. There is not a shred of evidence that the League reacquired, by price-cutting, the business it had lost to Triborough three weeks before; there is no evidence as to the price the League charged Weintraub for this milk. While it appears that the stockholders of Triborough and Jetter were the same, the reference in the finding to the Jetter Company as the loser of the Weintraub business is erroneous.

It was obvious at the trial, as it is now from reading the record, that the chief witness of the defendants called to support the monopolistic charges was witness Rootstein. Before taking the stand, he had prepared a list of the customers in writing, at the request of Jetter (Exhibit G, R. 651), whose business Jetter and the Triborough Companies had lost. Notwithstanding this fact, on direct examination his testimony was clothed in generalities and founded upon his recollection. During the noon recess, the appellant's counsel learned of the prepared statement and upon cross-

examination, the witness was compelled to produce the statement by the appellant's counsel, even at the hazard of damaging consequences. When the statement was produced in evidence and read, it showed conclusively that neither the Jetter nor the Triborough Companies lost a single customer to the Dairymen's League by reason of the order or by reason of the competitive practices which prevailed after the order went into effect, or for any other reason.

It will be noted that the Weintraub transaction was not listed among the storekeepers to whom the defendants claim business was lost, and, therefore, the right of the League to take that business back was not interpreted as lost business, but the business which the League bought and paid for, which had been taken away from them and which they regained.

While there is a suggestion in the Rootstein testimony (R. 394) that Jetter or Triborough lost five or six cases of trade a day to the League at 452 E. 146th Street, the evidence is so vague as to be valueless.

(b) The League has not engaged in unfair trade practices.

There is a feature of the Rootstein testimony which has an important bearing on the charge that the League sought to destroy its competitors, including the defendants, and to monopolize the milk business.

Rootstein testified that his relations with the League had been such that he would not solicit League customers, although he would have solicited the customers of many independents. *This was because he had always been able to satisfactorily settle any situation where he lost business to the League, or where the League had lost business to one of his companies* (R. 392).

Coming from an employee of the defendant, this evidence

shows conclusively that the League made no attempt to monopolize the market or destroy its competitors.

Finding No. 65 deals with the testimony of Rose Paley, a grocery store owner. She stated that the League gave her thirty-five cases of free milk about five months prior to the date she testified, which would be about August 1st, 1938. She had been buying milk from the League for over a year, and when the League gave her the free milk, she increased her purchases from two cases a day to three cases a day. There is ample evidence to show that the giving of free milk is a recognized practice to use in retaining one's customers. The defendant Jetter engaged in that practice (R. 391).

The figures set forth in finding No. 35 (R. 135) show that the sales of Class I milk of the League increased in October and November, 1938, over September, 1938. However, it was conceded by the defendants that sales of fluid milk increase after the New York City schools open and that the schools did not open until after September 10.

(c) The League lost business of the type engaged in by defendants.

It appears that the League lost fourteen per cent of its sales of milk in bottles in New York City in the three months succeeding September 1, 1938 (R. 400). This decrease in sales shows that the League did not hold its own in sales to stores, since store sales are bottle sales. The only evidence in this case related to a competitive situation in the sale of milk to stores, and, since the League's store sales decreased, it is apparent that the Order has not aided the League in taking this type of business away from the so-called independents whose main business is in sales to stores.

(d) The League was not responsible for the drop in prices in sales to stores.

The evidence clearly shows that the metropolitan wholesale market, that is, sale of milk to stores, restaurants, etc., was a highly competitive one and had been in a chaotic condition prior to September 1, 1938, the date Order No. 27 became effective; that on that day there was an effort made by various handlers, including Dairymen's League Co-operative Association, Inc. to obtain 9¾ cents for the milk in this trade (R. 319).

This situation continued for about two or three weeks. Price-cutting was started by Manchester Dairy, an independent dealer in the Borough of Bronx (R. 320). Within a few days other dealers followed suit and as a result there were successive declines in price throughout the marketing area; the keenest competition exists in the milk marketing area in New York between companies (R. 320).

Prior to September 1st, prices had been as low as three and one-half cents a quart, a figure obviously insufficient to pay the handling and delivery charges. After September 1st the lowest price was eight to eight and one-half cents a quart (R. 321). The defendants' witness, Rubenfeld, testified that information given him by his wholesale routemen was to the effect that the Dairymen's League Co-operative Association, Inc. was not responsible for the break down in prices. He stated that the League was naturally attempting, as every other distributor was, to protect its own business (R. 356).

The affidavit of George [illegible]itts, who has charge of the sales of the League in New York, was received in evidence (R. 398). This also gives the history of the price situation in New York in September, October and November, 1938, and specifically declares that the League did not engage

in price-cutting in New York City to increase its sales. Gradually prices were cut down in order to meet competition, from 9¾ cents during to most of September to little over nine cents by the fourth Friday in November. It shows that the policy of the organization has been to obtain as high a price in its sales to stores as was possible under current marketing conditions and which would allow the highest returns to the producers for whom the Association is acting as marketing agent (R. 399). He also stated that if the League sold at cut prices it would have an adverse action on the distributors who bought from the League and whose milk was sold in competition with that of the League.

7. Conclusions relative to evidence on conspiracy and monopoly

Strange as it may seem, this is the evidence which was before the Court when it made its findings that the League and Bargaining Agency had engaged in a conspiracy to establish in the League, the Bargaining Agency, and the dealers purchasing milk from Bargaining Agency members, a monopoly in the sale of milk to the exclusion of all others.

It is the evidence upon which the Court made its finding 97-a (R. 160) that the League conspired to convert the provisions of Title 7, Section 608-c, U.S.C.A., and of the Rogers-Allen Law, as instruments of coercion, restraint of trade and monopoly.

It is the evidence upon which the Court made its conclusions of law (Nos. 20 and 21, R. 165, 166) that the League and the Bargaining Agency were engaged in a conspiracy in restraint of trade for the purpose of controlling the milk industry and destroying the competitors of the League and its customers.

This evidence, however, supports no such findings or conclusions.

The conduct of the League in sponsoring and supporting legislation is free from a suggestion of an illegal or improper act. Its participation in the formation of the Bargaining Agency is granted by statute. It was within the contemplation of the statute that such participation was the approach to the solution of the problem. The Bargaining Agency's proposal of an order to regulate the milk industry is the recognized method of bringing administrative machinery into action. That also is authorized by statute. The League advocated the adoption of the order because it believed in the order. In fact, the Trial Court stated (R. 761):

> "It may be assumed that the Bargaining Agency and Dairymen's League Co-operative believe that these orders would solve the milk problem when they prepared and put forward their proposed order. or orders."

The members of the Bargaining Agency withheld their milk from dealers who violated the order and the record is devoid of evidence suggesting that the League attempted to destroy its competitors. Nevertheless, the Court, in making these findings, saw fit to apply to these facts the label—"Conspiracy to monopolize the milk business and destroy competitors." At most, the findings and conclusions are based upon three transactions: One, with Weintraub, involving ten cases a day; one with Rose Paley involving one case of milk a day; and one with an unidentified buyer involving five or six cases of milk a day in the market where the total daily sales of milk exceed 6¾ million pounds, and where 40,000 storekeepers are engaged in the sale of milk at retail.

We submit that it is apparent that all of the facts show a consistent effort on the part of the League to bring about

legislation and administrative action to better the prices farmers receive for their milk. That is one reason why the League is in existence. That is the reason the Rogers-Allen Law was passed. This is the declared policy of the Federal Act. That is the purpose of Order #27.

B. FINDINGS NO. *86* AND *97*-A, AND CONCLUSIONS OF LAW NOS. *20* AND *21* ARE IMMATERIAL.

As pointed out above, the Government's motion to strike these allegations from the answers of the three defendants was denied. It is apparent from the Trial Court's opinion that these charges affected the result.

Even if the charges of conspiracy and attempted monopolization were true, they would not affect the validity of the order.

1. The motives of the League and Bargaining Agency in advocating the adoption of legislation and Order 27, are immaterial.

The argument that legislation may be set aside by the Courts because private persons had improper motives in proposing, sponsoring and supporting such legislation, was answered by this Court many years ago in the case of U. S. v. Des Moines Nav. & Ry. Co., 142 U. S. 510. There the Court held that it could not go behind the action of the legislature, and quoted with approval from Cooley's Constitutional Limitations, as follows:

> "And although it has sometimes been urged at the bar that the Courts ought to inquire into the motives of the Legislature where fraud and corruption were alleged, and annul their action if the allegations were established, the argument has in no case been acceded to by the Judiciary, and they have never allowed the inquiry to be entered upon."

The policy behind such a decision is obviously sound. The same principle likewise precludes inquiry into the motives of the Secretary of Agriculture, an officer.

Isbrandsten-Moller Co., Inc., vs. United States, 300 U. S. 139.

If the motives of the Legislature or cabinet officer cannot be inquired into by the Courts, it follows *a fortiori* that the motives of private persons who have requested the Legislature or the cabinet officer to act, are immaterial.

2. The charge of monopoly would be material only in an application to the Secretary to modify the order.

It is obvious that no monopoly has resulted from the operation of the order. The statute under which this order was promulgated contains a provision whereby a person aggrieved may apply to the Secretary to have the order modified or rescinded. (608-c sd. 15). From the denial of such an application, an application for review may be made to a United States Court. If the order gave the League an advantage and it was attempting to use that advantage to monopolize the market, these defendants should have pursued the remedy provided in the statute before resorting to a suit.

Hegeman Farms Corporation v. Baldwin, 293 U. S. 163, 55 S. Ct. 7.

C. THE FINDINGS AND CONCLUSIONS THAT THE LEAGUE WAS ENGAGED IN A CONSPIRACY TO MONOPOLIZE THE NEW YORK METROPOLITAN MILK INDUSTRY ARE CONTRARY TO STATUTES WHICH EXEMPT CO-OPERATIVE ASSOCIATIONS FROM THE OPERATION OF SO-CALLED "ANTI-TRUST LEGISLATION."

1. Federal and State Legislation.

As a foreword to this discussion, counsel for appellant,

Dairymen's League, do not contend in this appeal that the various statutes cited under this point are applicable to overt acts not normal to nor connected with co-operative marketing and which aside from the anti-trust laws would be considered as unlawful, including acts of violence, unlawful threats and similar activities. It is, however, contended that the evidence in this cause does not warrant any Finding of Fact or Conclusions of Law that any such acts were found to have existed in this cause. The defendants in this cause, as well as the appellants, Dairymen's League and the Bargaining Agency, are New York State Corporations. As such they are regulated by and subject to the laws of the State of New York, which State has the power to amend the charters of corporations subject to its laws.

Section 340 of the General Business Law of the State of New York (Chapter 20 of the Consolidated Laws) contains a codification of the law of that state relating to monopolies, restraint of trade and restriction of competition. Such sections, as amended, contain the following subdivision:

> "2. The provisions of this article shall not apply to cooperative associations, corporate or otherwise, of farmers, gardeners, or dairymen, including live stock farmers and fruit growers, nor to contracts, agreements or arrangements made by such associations, nor to bona fide labor unions."

Section 582 of the Penal Law of said state (Chapter 40 of the Consolidated Laws) which relates to criminal conspiracies, contains the following provision:

> "* * * Associations, corporate or otherwise, of farmers, gardeners or dairymen, including livestock farmers and fruit growers, engaged in making collective sales or marketing for its members or shareholders of farm, orchard or dairy products pro-

duced by its members or shareholders are not conspiracies. Contracts, agreements, arrangements or combinations heretofore or hereafter made by such associations or the members, officers or directors thereof in making such collective sales and marketing and prescribing the terms and conditions thereof are not conspiracies and they shall not be construed to be injurious to trade or commerce."

Subdivision (f) of Section 258-c of the Agriculture and Markets Law of the State of New York (Chapter 69 of the Consolidated Laws) is as follows:

"(f) Where the milk dealer has been a party to a combination to fix prices, contrary to law. A co-operative association of dairymen organized under or operated pursuant to the provisions of chapter seventy-seven of the consolidated laws and engaged in making collective sales or marketing for its members or shareholders of dairy products produced by its members or shareholders shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly nor shall the contracts, agreements, arrangements or combinations heretofore or hereafter made by such association, or the members, officers or directors thereof, in making such collective sales and marketing and prescribing the terms and conditions thereof, be deemed or construed to be conspiracies or to be injurious to public welfare, trade or commerce, if otherwise authorized by such chapter or law."

Section 258-k of said Agriculture and Markets Law, which sets forth the declaration of policy of the recent Rogers-Allen Law, declares:

"* * * that it is the policy of this state to promote, foster and encourage the intelligent and orderly marketing of milk through producer owned and controlled cooperative associations; * * *"

Section 258-l of said Agriculture and Markets Law provides for the incorporation of producers' bargaining agencies which shall be organized by co-operative corporations.

The same section of the act authorizes a producers' bargaining agency to negotiate agreements with dealers or the basis of orders with the Commissioner of Agriculture of the State and authorizes such agency to appear before and negotiate with the Commissioner in regard to marketing agreements and orders; also for such an agency to act as a common marketing agency for its various co-operative association members and to make contracts and agreements not only under the state act but also pursuant to the Act of Congress of February 18, 1922, entitled "An Act to authorize association of producers of agricultural products", which is now Chapter 12 of Title 7 of the United States Code. Said section also contains the foll wing specific provisions:

"Producers' bargaining agencies and distributors' bargaining agencies may also meet and negotiate in order to carry out the purposes of this act and subject to the approval of the commissioner, as provided in section two hundred and fifty-eight-m, may make marketing agreements with each other and with cooperative associations in relation to the marketing of milk which may be handled or distributed in more than one marketing area. Such agencies may also meet and negotiate and take such reasonable measures as are necessary and advisable to cooperate with the commissioner and legally con-

stituted authorities of other states and of the United States with respect to the handling and control of milk handled in interstate commerce and carry out and effectuate the provisions of section two hundred and fifty-eight-m.

"Except as specifically provided in section two hundred and fifty-eight-m, the activities and operations of producers' bargaining agencies and distributors' bargaining agencies and of the constituent members thereof, and contracts, agreements or arrangements made by them, pursuant to the provisions of this subdivision, and of section two hundred and fifty-eight-m hereof, shall not be deemed or construed to be conspiracies, combinations, contracts or agreements in restraint of trade or commerce or an illegal monopoly."

Co-operative associations, such as the appellants, Dairymen's League and the Bargaining Agency, are given broad powers under the provisions of Articles 1, 2, 3, 4 and 6 of the Co-operative Corporations Law of the State of New York (Chapter 77 of the Consolidated Laws). Among such powers are not only the activities in the handling and marketing of the products of its members, the power to do everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any one or more objects of the corporations and to contract accordingly, as provided in subdivision (j) of Section 19 of this act, but also, as provided in Section 25 of said act, to make contracts and agreements with other associations.

In connection with the provisions of the Agriculture and Markets Law, above cited, and powers of co-operative associations and bargaining agencies to confer and negotiate with the Commissioner in regard to orders, it should be

noted that Section 258-n of said act authorizes the Commissioner to confer with state and federal authorities and to join with federal authorities in making joint investigations, holding joint hearings and making joint or concurrent orders.

The exemption conferred by Section 340 of the General Business Law, above cited, has been upheld as valid in Williams v. Quill, 277 N. Y. 1, 10, and the provisions of this section and also of Section 582 of the Penal Law were also upheld as valid in Barns vs. Dairymen's League Cooperative Association, Inc., 220 App. Div. 624.

In American Fur Manufacturers Association vs. Associated F. C. & T. Mfrs., 161 Misc. 246, 251; affirmed 251 App. Div. 708, the Court held that all contracts and arrangements of a dairy cooperative association were exempt from the said anti-trust laws.

In Liberty Warehouse Company vs. Burley Tobacco Growers Co-operative Marketing Association, 276 U. S. 71, a statute of Kentucky declaring that—"associations are not in restraint of trade" was considered by this Court. It was held that such a statute was not in violation of rights guaranteed by the Fourteenth Amendment, that a state may declare its own policy as to such matters and that a state may freely alter, amend or abolish the common law within its jurisdiction.

There are a considerable number of Federal acts pertinent to the questions presented here. Section 6 of the Clayton Act (Section 17 of Title 15 of the United States Code) specifically authorizes the existence and operation of non-stock co-operative associations and specifically declares that such organizations shall not be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws.

It should be noted that cooperative appellants here are non-stock co-operative associations.

After the passage of the Clayton amendment, considerable doubt arose as to the extent of the rights thereby conferred and also it was desired that such rights be extended to stock cooperatives. Legislation for this purpose was introduced in Congress, but although bills passed the House of Representatives action was delayed in the Senate because of a difference in the House and Senate Bill, the difference being chiefly an amendment introduced by the Senate Judiciary Committee which is shown in the report of that Committee, No. 236, of the First Session of the 67th Congress, such amendment being as follows:

> "Nothing herein contained shall be deemed to authorize the creation of or attempt to create, a monopoly, or to exempt any association organized hereunder from any proceeding instituted under the act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914, on account of unfair methods of competition in commerce."

Toward the end of the year or early in 1922, President Harding called an Agricultural Conference which he addressed on the subject of co-operative marketing and advocating new legislation on the subject. Resolutions were passed asking for additional legislation exempting co-operative associations from the anti-trust laws, which resolutions were transmitted to Congress and after this, Congress passed what is known as the Capper-Volstead Act which was approved by the President on February 18, 1922, entitled "An Act to authorize association of producers of agricultural products." This act is now listed as Chapter

12 of Title 7 of the United States Code. In the passage of this act, the amendment of the Senate Judiciary Committee was rejected. There has been little discussion of this legislation by the Federal courts. However, in the dissenting opinion by Mr. Justice Brandeis, concurred in by Mr. Justice Holmes and Mr. Justice Stone, in Frost vs. Corporation Commission, 278 U. S. 515, this act is discussed, and in the case of Liberty Warehouse Company vs. Burley Tobacco Growers Co-operative Marketing Association, 276 U. S. 71, the opinion of the Court refers to the recognition by Congress of co-operatives in the Clayton Act amendment, in the Capper-Volstead Act and in the Co-operative Marketing Act of 1926. See also Board of Trade of Chicago, 67 Fed. (2d), 402, 408, certiorari denied 291 U. S. 680.

In the Co-operative Marketing Act of 1926 (Section 455, Co-operative Marketing Act, Chapter 18 of Title 7 of the United States Code) there is an express authorization for co-operative associations to exchange statistical, economic and similar information by direct exchange either through associations and federations thereof or through a common agent created or selected by them. The Agricultural Marketing Act of 1929 (Sub-Chapter VII of Title 12 of the United States Code in Sub-divisions 3 and 4 of Section 1141) declares it to be the policy of Congress to permit the effective merchandising of agricultural commodities in interstate and foreign commerce—

> "(3) By encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled co-operative associations and other agencies.

(4) By aiding in preventing and controlling surpluses in any agricultural commodity, through orderly production and distribution, so as to maintain advantageous domestic markets and prevent such surpluses from causing undue and excessive fluctuations or depressions in prices for the commodity."

Also in Section 10-b of the Agricultural Adjustment Act of 1935 (Section 610-b of Title 7 of the United States Code) there is the following provision:

"The Secretary in the administration of this title, shall accord such recognition and encouragement to producer-owned and producer-controlled co-operative associations as will be in harmony with the policy toward co-operative associations set forth in existing acts of Congress and as will tend to promote efficient methods of marketing and distribution."

It is noteworthy that about 40 states have adopted statutes declaring that co-operative associations are not in restraint of trade or monopolies. Reference to these acts is made in Liberty Warehouse Co. vs. Burley Tobacco Growers, supra. Numerous decisions uphold such statutes and declare that co-operative associations are not in restraint of trade or illegal monopolies.[1]

[1] Kansas Wheat Growers vs. Schulte, 13 Kan. 672; Brown vs. Staple Cotton Growers Co-op. Asso., 132 Miss. 859; Northern Wisconsin Co-op. T. P. vs. Bekkedal, 182 Wis. 571; Dark Tobacco Gr. Co-op. Asso. vs. Dunn, 150 Tenn. 612; Minnesota Wheat Growers vs. Huggins, 162 Minn. 471; List vs. Burley Tobacco Growers Co-op. Asso., 114 Ohio 361; Dark Tobacco Growers Co-op. Asso. vs. Robertson, 84 Ind. App. 51; Potter vs. Dark Tobacco Growers Co-op. 201 Ky. 441; Harrell vs. Cane Growers Co-op, 160 Ga. 30; Nebraska Wheat Growers vs. Norquist, 113 Nebr. 731; Warren vs. Alabama Farm B. Cotton Asso:. 213 Ala. 61; Manchester Dairy System vs. Hayward, 132 Atl. 12, 19; 83 N .H. 193; Clear Lake Co-op. Live Stock Asso. vs. Weir, 200 Iowa 1293; Hollingsworth vs. Texas Hay Asso. 246 S. W. 1058; Washington Cranberry Asso. vs. Moore; 17 Wash. 430; Poultry Producers vs. Barlow, 189 Cal. 278; Oregon Growers Co-op. Asso. vs. Lentz, 107 Ore. 561; South Carolina Cotton Growers vs. English, 135 S. C. 19; Milk Producers' Marketing Co. vs. Bell, 234 Ill. App. 222; Barns vs. Dairymen's League Co-operative Asso. Inc., 220 App. Div. (N. Y.) 624.
Tobacco Growers Co-op. Asso. vs. Jones, 185 N. C. 265.

These decisions were summarized in a report from the Federal Trade Commission to the United States Senate on Co-operative Marketing, May 2, 1928, at Page 341 as follows:

> "Court decisions are now practically unanimous in reaching the conclusion that the standardized co-operative marketing acts are valid and that the associations formed under them are not monopolies in restraint of trade."

Even the grant of a monopoly by a state legislature if otherwise an appropriate exercise of the police power is not void as denying equal protection of the law.

Pacific States Box & Basket Co. vs. White, 296 U. S. 176, 184.

The adoption of similar legislation by so many states in relation to co-operative associations and anti-trust laws and the unanimity of decision by the courts that agricultural co-operatives are operating in the public interest and should not be deemed to be monopolies or operating in restraint of trade, clearly demonstrate that statutes along this line are neither abitrary nor capricious. West Coast Hotel Co. vs. Parrish, 300 U. S. 379; Bain Peanut Co. vs. Pinson, 282 U. S. 499.

In Liberty Warehouse Co. vs. Burley Tobacco Growers Co-op. Marketing Asso. 276 U. S. 71, the Court, after reviewing some of the decisions quoted above, said:

> "The opinion generally accepted - - - and upon reasonable grounds, we think - - - is that the co-operative marketing statutes promote the common interest."

The legality of a combination should be determined by a consideration of economic conditions and whether or not its

operations are detrimental to public interest. United States vs. United States Steel Corp., 251 U. S. 417. If this rule is to obtain, it is certainly a fair deduction that the law-making bodies may declare that public interests will be promoted by certain combinations and agreements. Surely they must have power to discriminate between good and bad combinations and to declare that some promote public interest and others are detrimental to it.

"* * * Whatever the law condemns is against the policy of the law and whatever the law expressly, albeit unwisely, permits, cannot be condemned by the Courts as against public policy."

Hollis vs. Drew Theological Seminary, 95 N. Y. 166, 172.

Public policy is what the lawmakers declare it to be.

United States vs. Trans. Missouri Freight Asso., 166 U. S. 290;

Twin City Pipe Line Co. vs. Harding Glass Co., 283 U. S. 353;

Messersmith vs. Am. Fid. Co., 232 N. Y. 161, 163;

Lincoln Park Coal & Buck Co. vs. Wabash Ry. Co., 338 Ill. 82.

Operations of a co-operative are not against or contrary to public policy.

Conn. Milk Prod. Asso. vs. Brock-Hill Dairy Co., 122 Conn. 482.

Moreover, the anti-trust laws are aimed at aggregation of capital.

Standard Oil Co. vs. United States, 221 U. S. 1, 50.

Co-operative Associations are organized along different lines without aim at pecuniary profits and are a refuge from these aggregations of capital.

Dissenting opinion in *Liggett vs. Lee*, 288 U. S. 517;

In view of all of the statutes, Federal and State above cited, and decisions of the Court cited supra, it is submitted that the Findings of Fact and Conclusions of Law by the Court below as to conspiracy and monopoly on the part of the plaintiffs, Dairymen's League Co-operative Association, Inc. and Metropolitan Co-operative Milk Producers Bargaining Agency, Inc. were contrary to the public policy, both of the United States and of the State of New York, and were not proper or authorized that no such Findings or Conclusions can be legally made by any Court as to intrastate transactions in New York State on account of its statutory provisions, above cited, nor as to interstate transactions under the provisions of Section 6 of the Clayton Act, the Federal Marketing Act of 1926, and the Capper Volstead Act, except possibly under a proceeding pursuant to said Act.

The basic grounds of the alleged conspiracies and monopolies are, first, that the program of these co-operatives in securing passage of the New York State amendments to the agricultural law (commonly known as the Rogers-Allen Law) and the organization of the Bargaining Agency thereunder and the petition for and efforts to secure the adoption of a Federal order under the Marketing Agreement Act of 1937 were part of a scheme to achieve monopoly. Even granted that this be true, co-operatives are not subject to prosecution therefor except as may be permitted under the Capper-Volstead Act. Secondly, it is claimed that there

was an illegal conspiracy to force the defendants to sign a marketing agreement. The marketing agreement which was proposed by the co-operatives was not a part of the cause of action by the Government or the other plaintiffs in this case. Even if signed, the making thereof was specifically declared by Congress in Section 8-b of the Marketing Agreement Act of 1937 to be not in violation of any of the anti-trust laws of the United States and that any such agreement shall be deemed to be lawful.

Moreover, the agreement simply provided that the dealer should pay the producers or co-operative associations from whom he received his milk according to the terms of the Federal order, with the right to cancel such agreement at the end of any month on thirty days' notice. It was, therefore, merely a marketing agreement, as its name indicated, between the co-operative associations or producers depending on the parties thereto for the sale of the milk of the producers at the prices fixed by the Government. It was, therefore, squarely within the powers authorized by the State and Federal laws, and it is submitted that it could not be considered a conspiracy as to interstate commerce under either Section 6 of the Clayton Act or the Capper-Volstead Act. The associations as agents for their producers had the duty of selling milk and of agreeing on the terms therefor and there must be coupled with such power the right to refuse to sell in case the terms are not satisfactory. The alleged attempts of intimidation or coercion were merely the adoption by the co-operatives of their undoubted right to refuse to sell if the buyer would not agree to pay satisfactory prices and to buy upon terms satisfactory to the co-operative.

Thirdly, the co-operatives had the right to circulate among other producers, pursuant to the provisions of the

Federal Marketing Act of 1926, full information in regard to conditions of the market, the refusal of the dealers to pay prices or to sign marketing agreements, as well as to notify them of the dealers who were not complying with the Federal and State orders.

2. The Capper-Volstead Act provides an exclusive method of review of the activities of cooperatives which result in monopoly or restraint of trade.

It is submitted that the Capper-Volstead Act as a supplement to the Clayton Act provision definitely provides a new remedy in the case of agricultural co-operative associations in case of violations which otherwise come under the anti-trust acts and that the exclusive remedy, at least in the first instance, is that set forth in the act; namely, a proceeding before the Secretary of Agriculture of the United States and a determination by him reviewable in the Federal Courts and, if necessary, a decree therein finally determining the issues presented.

Similar questions were presented in this Court under provisions of the Federal Shipping Act and Interstate Commerce Commission Act in United States Navigation Co. vs. Cunard S. S. Co., 284 U. S. 474; Terminal Warehouse vs. Pennsylvania R. R., 297 U. S, 500, and New York Lumber Trade Association vs. Lacey, 245 App. Div. 262, affirmed 269 N. Y. 595 and certiorari denied in 298 U. S. 684.

3. The refusal of co-operatives to sell milk to dealers who would not comply with the order was not unlawful.

It was not illegal for co-operative associations to demand that the dealers to whom they were selling the products of their members should pay the prices which the producers demanded and which were the prices fixed by Federal and State orders. Except where under the police power prices

are fixed in businesses affected with a public interest by State authorities or by Federal authorities under the commerce power, it is the right of an owner to fix the price at which his property shall be sold as an inherent attribute of the property itself under the due process of law clauses of the Fifth and Fourteenth Amendments.

Old Dearborn Distributing Co. vs. Seagram, Distillers Corp., 299 U. S. 183, 192.

"The right of a person to do business with whomsoever he desires is well established. * * * There is no reason based on the common law or the Sherman Law, which requires the defendants to do business with Plaintiff, if he is objectionable to them, and that objection is based upon sufficient reason."

Hart v. B. F. Keith Vaudeville Exchange, 12 Fed. (2d) 341, citing *Adair vs. U. S.*, 208 U. S. 161, and *Federal Trade Comm. v. Gratz*, 253 U. S. 421;

See also *Federal Trade Comm. v. Clark*, 263 U. S. 565.

A vendor may dictate his own prices.

Whitwell v. Continental Tobacco Co., 125 Fed. 454.

The associations were actually authorized by statute, Federal and State, to act in collectively marketing for the producers and they could either act separately or jointly through a common agency, such as the bargaining agency, which was specifically authorized by the New York State statute to act in such matters. It is not unlawful to do lawful acts unless there be some direct illegal acts in connection therewith.

Apex Hosiery vs. Leader, 90 Fed. (2d) 155;

Carroll Building Corp. vs. Greenberg P. Supplies, Inc., 216 App. Div. 268.

Individual producers of milk are helpless in bargaining with a dealer in a milk shed like that of New York where milk must be shipped long distances and must be collected and cooled at a shipping station. The producer must deliver his milk—a perishable product—at the station in his vicinity. The dealer can shut out any producer at any time or close his station. Only by collected action through co-operative associations has the producer any bargaining power and these associations should be permitted the rights of peaceable persuasion and pressure of notoriety allowed labor unions.

(See *Nann vs. Raimist*, 255 N. Y. 307, 314.)

Furthermore, the co-operatives are not aggregations of capital. They are organiations of men—men who are endeavoring to sell products produced by them largely as a result of their own labor. It is submitted that as such, producers of milk have the right not only individually but also through their associations to sell their milk at such prices as they deem advisable and to withhold their milk from the market if such prices are not obtainable, and that in this respect they have and should have the same rights that their fellow-workers have, who are members of labor unions, in collectively bargaining for their labor, in persuading laborers to join their unions and in carrying on a strike where collective bargaining efforts fail. Certainly the New York State Legislature in its anti-trust statutes has placed them on the same basis and it is evidently the intent of Congress to give similar rights to producers of agricultural products. It would surely be a strange anomaly

if the rights given to the laboring man in the city are denied to the farmer who lives by the sweat of his brow in the country. Surely labor unions have the right not only to fix the wage rates for their members which the employer shall pay, but also have the undoubted right to urge that all laborers of the industry affected in the territory shall stand shoulder to shoulder in their demand for such wages. It is true that the co-operatives in New York State did have a program but it was a program to obtain definite prices and conditions for the sale of their milk and it would seem only reasonable that as a part of this program they had a right to urge all producers in the milk shed who were similarly situated and who were members of associations belonging to the Bargaining Agency, to stand shoulder to shoulder with them and not to sell or deliver their milk to the dealers except on the prescribed term. This is what they did and all that they did in this matter except to deliver their milk to other handlers where the dealers refused to make payment according to the terms demanded by them.

There is no claim on the part of the defendant Jetter Dairy Co. that it had any contracts with its producers which were in any way interfered with by the co-operative associations. In the absence of any such contracts with producers, it is submitted that the appellant co-operative associations could lawfully seek to extend their membership by solicitation of the producers, even of the defendant Jetter Dairy Co.

Furthermore, the record is entirely barren of any evidence showing any intent on the part of Dairymen's League Co-operative Association, Inc. to in any way injure the defendant Jetter Dairy Co. or any of the other defendants. Nor was any milk withheld from any of the defendants. To maintain their claim of an illegal conspiracy, it was neces-

sary for them to show that there was a direct injury to them as a proximate result of the acts of plaintiff co-operatives. Hart v. B. F. Keith Vaudeville Exchange, 12 Fed. (2d) 341, 345.

The evidence discloses that prior to September 1, when the Federal and State orders went into effect, a serious condition existed in the milk industry. The price situation was utterly demoralized in New York City. Prices to producers in the country were ruinous. It was to remedy this condition that co-operatives, including the appellants here, adopted a program for securing application of the Federal and State orders and enforcement thereof. This program was not nation-wide but it was limited to the milk producing area for the New York City market and, under all the circumstances existing, it is submitted that the principles enunciated in the case of Appalachian Coals, Inc. vs. United States, 288 U. S. 344, should apply. See also National Association of Window Glass Manufacturers vs. United States, 263 U. S. 403.

Violations of the anti-trust laws are properly the subject of defense only where contracts of the parties involved are in unreasonable restraint of trade or monopoly, and then only when inherently connected with such restraint or monopoly, are directly involved.

A. B. Small Co. vs. Lamborn & Co. 267 U. S. 248.

Number 25 of Defendant's Conclusions of Law is erroneous because of the fact that it charges violation of the provisions of Sections 12 to 14 of Title 15 of the United States Code. Apparently Sections 12 and 14 are not relevant and we assume that the allegations referred to what is commonly known as the Robinson-Patman Act.

The answers of the defendants contain no allegation as to any claimed violation of the Robinson-Patman Act.

The conclusion apparently relates to the 35 cases of milk given to Rose Paley in the summer of 1938, some time before the new orders took effect, but the evidence discloses that this was done in competition and that other dealers selling to the same customer did the same thing. Therefore, it would seem that the rider in the Robinson-Patman Act relating to acts done to meet competition was applicable. The transaction was entirely in intrastate commerce after the milk had arrived in New York City, been processed and distributed from a city plant, and it is submitted that in any event it was not within the purview of the provisions of the Robinson-Patman Act.

III.

The statutory provision authorizing cooperatives to pay their members a blended price rather than a uniform price does not deprive the defendants of their property without due process of law.

The Act, Section 608c-5-F provides:

> "Nothing contained in this Sub-Section (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of Sections 451 to 457 of Title known as the 'Capper-Volstead Act' engaged in making collective sales or marketing of milk or its products for the producers thereof from blending the net proceeds of all of its sales in all markets in all use classifications and making distribution thereof to its producers, in accordance with the contract between the association and its producers; provided that it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the

prices fixed, pursuant to Paragraph A of this Subsection (5) for such market."

In this respect the statute treats cooperative marketing associations in a different manner than it does ordinary business corporations handling milk. It is claimed that this difference in classification renders the Act unconstitutional. At the outset we can dismiss the claim that this difference in classification denies the defendants equal protection of the laws. The Fourteenth Amendment to the United States Constitution, which guarantees equal protection of the laws, is a limitation upon State action and not upon Federal action. No provision of the United States Constitution guarantees any person equal protection of the laws as to Federal action. This action involves the validity of a law passed by Congress, and the most that can be claimed is that the difference in the treatment of cooperatives deprives the defendants of their property without due process of law.

We submit that the practical differences between cooperative marketing associations which are operated on a non-profit basis from business corporations which are operated for profit, justify a different treatment of the two.

A. LEGISLATIVE AND JUDICIAL HISTORY OF EXEMPTION OF COOPERATIVES FROM REGULATIONS IMPOSED UPON ORDINARY BUSINESS ENTERPRISES.

For many years it has been the legislative policy of Congress and the Legislatures of many states to foster the growth and development of cooperative marketing associations and to exempt them from many provisions of the law applicable to ordinary business corporations.

1. Federal Legislation

The Clayton Act, (38 Stat. 73, 15 U. S. C. A. 17) exempts cooperative marketing associations.

The War Finance Corporation Act of April 5, 1918 (40 Stat. 512, 15 U. S. C. A. 348) authorized the War Finance Corporation to make advances to cooperative associations of producers.

The Grain Futures Act of 1922 (42 Stat. 998, 7 U. S. C. A. 1-17) contains protection to cooperatives beyond that given business corporations.

Cooperative associations of tobacco growers are exempt from the requirement of registration under the McKinley Tariff Act by the provisions of Feb. 26, 1926 (44 Stat. 91, 26 U. S. C. A., 750-b).

The Agricultural Marketing Act of June 15, 1929, (46 Stat. 18, 12 U. S. C. A., 1141-1141-J) sets out the policy of the Act as follows:

> "A—It is hereby declared to be the policy of Congress to promote the effective merchandising of agricultural commodites in interstate and foreign commerce, so that the industry of agriculture will be placed on a basis of economical equality with other industries, and to that end to protect, control and stabilize the current of interstate and foreign commerce in the marketing of agricultural commodities and their food products: * * *.
>
> "(3) By encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies."

The Act of June 16, 1933 (48 Stat. 257, 12 U. S. C. A., 1134-1134-M, 1138-1138-E) authorizes the organization of banks for cooperatives which are authorized to make loans to cooperative associations.

The Grain Futures Act enacted by Congress September 21, 1922 (42 Stat. 998, 7 U. S. C. A., 1-17) was challenged in Chicago Farm & Trade v. Olzen, 262 U. S. 1, on the ground, among other things, that it unduly favored farmer organizations. The Act was upheld, however, despite the fact that the value of membership in the Board of Trade was decreased by the provision favoring cooperative associations.

Agricultural associations have been exempt from the payment of Federal income taxes since 1913. (38 Stat. 172). This exemption was upheld in Flint v. Stone-Tracy Co., 220 U. S. 107, 173, and Brushaber v. Union Pac. R. R. Co., 240 U. S. 1, 21. The 1934 Revenue Act (48 Stat. 700, 26 U. S. C. A., 103 (12)) prescribes a more definite exemption as to cooperative associations of producers.

2. State Legislation

Numerous decisions of State Courts have sustained statutes which treated cooperative associations in a different class from ordinary corporations.

See:

Oregon Growers Cooperative Assn. v. Lentz, 107 Ore. 561; 212 Pac. 811,

Minn. Wheat Growers Cooperative Market Assn. v. Huggins, 162 Minn. 471; 203 N. W. 420,

Harrell v. Cane Growers Coop. Ass., 160 Ga., 30; 126 S. E., 531;

Potter v. Dark Tobacco Growers Coop. Assn., 201 Ky. 441; 257 S. W. 33,
and cases cited in note at page 47 supra.

State milk control laws permit cooperative marketing associations to pay their producers a blended price rather than the regulated price which business corporations must pay the producers from whom they buy milk. Alabama Milk Control Act. (Gen. Acts Ala. Regular Session 1935, pp. 204-220, approved July 9, 1935). The Florida Milk Control Act (Laws of Fla. 1937, Vol. 2, c. 18022, pp. 626-646) contains the same provision. Similar provisions are also contained in the Acts of Pennsylvania, Oregon, New Jersey and Connecticut. The Indiana Milk Control Act contains a provision substantially similar, and in addition, an equalization provision which was sustained in Milk Control Board vs. Crescent Creamery, 14 N. E. (2d), 588 —— Ind. ——; appeal dismissed by U. S. Sup. Ct. Oct. 10, 1938, 59 S. Ct. 87.

The New York Milk Control Law of 1933 required business milk dealers to pay their producers a regulated price, whereas cooperative associations were permitted to return to their producers the blended price. The validity of the New York Milk Control Law was sustained by this Court in—

People v. Nebbia, 291 U. S. 502, 517, 518,

Borden v. Ten Eyck, 297 U. S. 251, and

Hegeman Farms Corp. v. Baldwin, 293 U. S. 163; 55 Sup. Ct. 7.

The cooperative exemption was not discussed in any of those cases. However, the exemption was the subject of controversy in the case of Eisenberg Farms, Inc. v. Baldwin, 265 N. Y. 662. A memorandum opinion was written

by the Court of Appeals in that case, but in the subsequent case of Matter of Mayflower Farms, Inc., 267 N. Y. 9, the Court of Appeals stated:

> "In Matter of Eisenberg Farms, Inc. v. Baldwin, 265 N. Y. 662, this court decided that the differential clause in favor of Cooperative Associations which permitted them to pay producers less than the price fixed by the Commission for milk was constitutional."

This Court has recognized and upheld the separate classification of cooperative associations and ordinary business corporations. In Liberty Warehouse Co. v. Burley Tobacco Growers Coop. Assn., 276 U. S. 71, an action was brought against the Warehouse Company to recover a penalty for wilfully selling tobacco pledged to a cooperative association, in violation of the Kentucky Cooperative Marketing Act. The Warehouse Company contended that the Kentucky Act, which authorized the organization of cooperative associations, protected the contracts made by them with producers and provided that such associations were not to be deemed monopolies, combinations or conspiracies in restraint of trade, was improper class-legislation. The Court upheld the statute. The Court said:

> "It is stated without contradiction that cooperative marketing statutes substantially like the one under review have been enacted by 42 states. Congress has recognized the utility of cooperative association among the farmers in the Clayton Act (38 Stat. 731, 15 U. S. C. A. Sec. 17), the Capper-Volstead Act (42 Stat. 388, 7 U. S. C. A., Secs. 291-292), and the Cooperative Marketing Act of 1926, (44 Stat. 802, 7 U. S. C. A., Secs. 451-457). These statutes reveal widespread legislative approval of the

plan for protecting scattered producers and advancing the public interest.

Although frequently challenged, we do not find that any court has condemned an essential feature of the plan with the single exception of the Supreme Court of Minnesota in the above-cited case. * * * The opinion generally accepted—and upon reasonable grounds, we think—is that the cooperative marketing statutes promote the common interest. The provisions for protecting the fundamental contracts against interference by outsiders are essential to the plan. This Court has recognized as permissible some discrimination intended to encourage agriculture."

The Nebbia case is significant because of its discussion of alleged discrimination. In that case, a storekeeper buying milk from a dealer had to pay 8¢ per quart and 5¢ per pint, whereas a dealer buying his supply from a farmer could buy his milk at lower prices. The storekeeper had to resell his milk at retail at not less than 9¢ per quart and 6¢ per pint, and the dealer had to sell his milk at retail at not less than 10¢ per quart and 6¢ per pint. It was obvious that a storekeeper buying from a dealer was at a disadvantage in competing with a dealer for retail sales, because the dealer could buy his milk for less money. The Court stated (P. 521):

"But if it were shown that the appellant is compelled to buy from a distributor, the difference in the retail price he is required to charge his customers from that prescribed for sales by distributors is not, on its face, arbitrary or unreasonable, for there are obvious distinctions between the two sorts of merchants which may well justify a difference of

treatment if the Legislature possesses the power to control the prices to be charged for fluid milk."

No discussion of the validity of an exemption of farmer cooperatives from a regulation imposed upon an ordinary business enterprise is complete without Frost v. Corp. Commission, 278 U. S. 515, 49 Sup. Ct. 235, 73 Law. Ed. 483.

In the Frost case, a statute of the State of Oklahoma required the corporation commission to issue a license to operate a cotton ginning establishment to a cooperative association without a showing of public necessity, when the application of the cooperative was accompanied by a petition signed by one hundred citizens and taxpayers. Other types of business enterprise were required to prove public necessity before the commission could issue a license. The Laws of Oklahoma permitted the organization of two types of cooperative associations: one, a stock cooperative which could declare dividends at not to exceed 8%; the second, a non-stock cooperative.

Frost proved necessity and received a license. Later a stock cooperative applied for a license. The Commission held that regardless of necessity, the statute made it mandatory to issue the license. Frost sued to enjoin the Commission from issuing the license and the bill was dismissed by the Trial Court. The Supreme Court reversed the decree and concluded that the statute under attack was unconstitutional as contravening the equal protection clause of the 14th Amendment. However, the Court stated:

> "As applied to corporations organized under the 1917 Act, we have no reason to doubt that the classification created by the promise might properly be upheld."

The 1917 Act applied to non-stock, non-profit corporations.

The Dairymen's League is a non-stock, non-profit cooperative. Its activities are those which the defendants claim operate to make the Act unconstitutional and the order invoked. The Act as applied to this litigation is, therefore, valid even under the majority opinion in the Frost case.

The dissenting opinion of Mr. Justice Brandeis in the Frost case shows, among other things, the purpose of Cooperative Marketing Associations, their history, the universal legislative recognition of their differences from ordinary business enterprises, and the economic evils that justify different treatment.

The opinion is, as everyone recognizes, a landmark in judicial review of cooperative legislation.

B. PRACTICAL DIFFERENCES BETWEEN COOPERATIVES AND ORDINARY BUSINESS ENTERPRISES WHICH JUSTIFY AN EXEMPTION OF THE FORMER FROM A REGULATION IMPOSED UPON THE LATTER.

The difference between a cooperative marketing association and an ordinary business corporation is of course obvious. The primary interest of the ordinary business enterprise is in the spread between the cost of the product it sells and the sales price of that product. The nature of the cooperative is well stated in a bulletin issued by U. S. Dept. of Agriculture in August, 1929, Circular No. 94, entitled "Farmers Cooperative Associations in the United States, 1929," which reads in part as follows:

> "Cooperation among farmers, whether for marketing, for obtaining credit, or for the purchase of farm supplies, aims at providing a means whereby farmers may strengthen their economic position. Through cooperative marketing and purchasing, the farmer becomes a joint owner in large-scale business units which are directed toward rendering farm production and the distribution of farm products more

efficient. Farmers, through cooperative organization, aim to eliminate waste, to improve the grading and standardization of farm products, to handle and distribute farm products efficiently, and to promote better production practices—in short, to achieve more efficient production and marketing.

"Cooperative organization also aims to improve the most important part of rural life, human relationship—to encourage the development of greater social unity in a community and a occupational consciousness and pride on the part of the farm population. In this respect, one of the big problems of American agriculture is psychological. Although other branches of American industry and commerce are far advanced in the development of group efforts, the farmer, in many branches of agriculture, is still trailing behind as an individual. That is one of the great difficulties with which the American farmer is confronted today; he is still too individualistic in the conduct of his business in a society where organization is becoming more and more the basis of large-scale business.

"Under present farming conditions in North America, production is primarily an individual activity, but marketing of farm commodities and purchasing of farm supplies may be done most effectively through group effort. The farmer, as an individual, can have little control over the conditions under which his crops or livestock products are sold. Therefore group action in agriculture should center around the selling and purchasing departments of farmers' business associations.

"The American farmer operating the family-size farm unit has individual problems which are concerned with the efficient organization and management of the farm. On the other hand, the farmers' net income is influenced by the prices which he receives for his products and the prices which he pays for farm supplies. The farmer, as an individual, can do little to improve these conditions. These are problems which require group action.

* * * * *

"A farmers' cooperative business association is a form of organization by which farmers may act together in the collective handling, processing, and marketing of their agricultural products or in the purchasing of farm supplies. Individual farmers acting alone, operating the average American family-size farm, are helpless in establishing and maintaining outlets and markets for their products, except in a comparatively few local instances: Through their association farmers can apply modern business methods to the assembling, grading, standardizing, processing, transporting, financing, distributing, and selling of farm products.

"The Agricultural cooperative association may in a sense be looked upon as the hired man of the farmer members. The association enables a group of farmers to bring together the output of their individual farms for collective marketing. The farmer, through his association, is simply applying the principle of group effort to those phases of his farm business that lend themselves to large-scale operations.

"Both the State and Federal Governments have recognized the cooperative form of organization as a means by which farmers may act together in the collective marketing of the products on their farms, the purchasing of farm supplies, the securing of credit and in other farm activities."

This is the legislative and judicial background upon which we must examine the validity of Section 608-c-5-F of the Act which authorizes cooperative associations to return to their producers the blended price rather than the uniform price. The reports of public bodies which have investigated the milk business and the record before the Secretary on Order No. 27 furnish the economic background for an examination of the Act and order as applied to the New York Milk Shed. The statutory exemption of cooperative associations from various regulations affecting ordinary business corporations indicates a widespread belief that cooperative associations are entitled to different treatment.

There is a greater need for a cooperative marketing association available to milk producers than to other farm products. Milk is perishable and it cannot be stored.

Requiring business corporations to pay producers a regulated price for milk does not deprive the business corporations of their property without due process of law. That is well established by the numerous cases decided by this Court sustaining price-fixing statutes. If price-fixing does not deprive the dealers of their property without due process of law, then it follows that a statute which permits farmers to market their product collectively and pay themselves whatever they receive for their product, does not deprive business corporations of their property without due process of law.

Farmers marketing their products through a cooperative association cannot receive more than the prices received for those products, less expenses. To hold otherwise would drive cooperatives from the field of marketing.

IV.

The cooperative differentials provided for in Article 7, of Section 5 of the Order are authorized by the Act and do not deprive the defendants of their property without due process of law.

As we understand the defendants' position, it is not claimed that these payments are not authorized by the Act, nor is it claimed that these payments are improper as compensation for services performed by cooperatives which benefit the market as a whole. It seems to be the defendants' position that these payments enable the League to cut prices and therefore, further, the alleged conspiracy to destroy competitors and the alleged attempt to monopolize the market. We submit that the conspiracy and monopoly charges are unsupported by proof and are immaterial, for the reasons heretofore discussed. However, the Trial Court seemed to take the view that these cooperative payments were discriminatory and were a factor in depriving the defendants of their property without due process of law. We will show, therefore, that these payments do not operate to deprive the defendants of their property without due process of law and that the payments are authorized by provisions of the Act.

A. THE DEFENDANTS ARE NOT ENTITLED TO QUESTION THE LEGALITY OF THESE PAYMENTS.

At the outset, we submit that these defendants are not in

a position to complain about these payments. The payments come from the producers' settlement fund and therefore come out of the producers. The defendant Jetter is not a producer and, under well-settled constitutional principles, is not in a position to complain that the property of someone else may have been taken without due process of law. The cooperative defendants are entitled to the payments by qualifying for them under the provisions of the order, and therefore cannot complain.

B. THE EVIDENCE BEFORE THE SECRETARY SHOWS AN ECONOMIC NEED FOR THESE PAYMENTS.

The cooperative payments are justified. To receive such a payment, the cooperative must satisfy the Secretary that it is qualified to do so under the provisions of the order which read as follows:

> "Sec. 5—Payments to Cooperative Assocations: Any cooperative association of producers may apply to the Secretary for a determination of its qualifications to receive payments pursuant to this section by reason of its having and exercising full authority in the sale of the milk of its members, using its best efforts to supply, in times of short supply, Class 1 milk to the marketing area and to secure utilization of milk, in times of long supply, in a manner to assure the greatest possible returns to all producers, and having its entire activities under the control of its members."

This payment to a cooperative has its roots in the surplus milk problem. The evidence before the Secretary justifies the conclusion that without adequate control of the surplus problem, the order would be unworkable and that these payments to cooperatives are an essential means to a

proper control of the problem of surplus. The evidence before the Secretary (Exhibit A-3) justifies the following statements:

1— Surplus milk is the primary cause of low milk prices.

2— The reports of numerous legislative and administrative investigations which were referred to in the evidence before the Secretary indicated that the producers' interests would be best served by the continued existence of cooperatives able to handle surplus milk, or to bargain for its handling in a manner that would protect producers.

3— The cooperative payments provided for in the order are necessary to compensate cooperatives for their services in disposing of surplus milk for the benefit of producers.

1.

The problem of the disposition of surplus milk has been referred to as a disturbing factor in numerous legislative and administrative reports. Perhaps the clearest statement on the subject will be found in the Pitcher Committee Report quoted in the Nebbia case (291 U. S. 502 at 517 and 518) as follows:

> "Thus surplus milk presents a serious problem, as the prices which can be realized for it for other uses are much less than those obtainable for milk sold for consumption in fluid form or as cream. A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milk shed. So long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor.

The fact that the larger distributors find it necessary to carry large quantities of surplus milk, while the smaller distributors do not, leads to price-cutting and other forms of destructive competition. Smaller distributors, who take no responsibility for the surplus, by purchasing their milk at the blended prices (i.e., an average between the price paid the producer for milk for sale as fluid milk, and the lower surplus milk price paid by the larger organizations) can undersell the larger distributors. Indulgence in this price-cutting often compels the larger dealer to cut the price to his own and the producer's detriment."

2.

The Pitcher Committee report, at page 17, stated:

"Universal application of the classified price plan and control of surplus milk by the producers through effective cooperative organization, appears to offer the best prospect for permanent stabilization of the dairy industry in the New York milk shed."

In the report of the Commissioner of Agriculture and Markets, Holton V. Noyes, to the New York Legislature, with reference to an audit of milk dealers and cooperative associations, he stated:

"It seems to me that this examination has shown very clearly that if the farmers are to control prices which they receive for so-called Class 1 or fluid milk, they must also have control of the surplus. This could only be brought about by complete cooperation of the farmers and by handling all their own milk through their own plants properly equipped to take care of the surplus. It is my definite opinion that

as the industry is now operated, the surplus is in the wrong hands.

"If they maintain their own facilities for handling their surplus and sell only to the distributors what is needed for fluid consumption, the farmers then will have the satisfaction of knowing exactly what their surplus milk brings and realize more clearly their obligation to stabilize the industry by avoiding overproduction which, in turn, creates a burdensome surplus."

The report of the New York State Attorney General to the Legislature in 1938 contains the following statement at page 55, (Hearing Record, page 109) Ex. A-3:

"And finally, a producers' organization is definitely necessary in order to stop the purchase of surplus milk at surplus milk prices by distributors and its subsequent use in fluid form."

Under Point I of this brief, we referred to the evidence taken at the hearing showing the development of surplus facilities by the League in 1920 and 1927, and the curtailing of those activities in 1925 at a time when the milk was needed to balance the fluid market.

The evidence before the Secretary showed that an ordinary business distributor who found himself with excess milk over and above his fluid and manufactured product requirements would discontinue the purchase of milk, thus throwing the surplus back on the producers. The cooperative, because of its contractual relation with its members and because of its very nature as a marketing agency for producers, must continue to handle surplus, even though it may have no profitable outlet and even though the manufactured market may be glutted with regular supplies.

In the milk business someone must stand ready to handle

the surplus milk of farmers during the seasons when there is a surplus, unless the milk is to be thrown away or blindly dumped on the market. Likewise, someone must stand ready to close manufacturing plants and let them lie idle during periods of short supply when the milk is needed for the fluid market. The evidence before the Secretary showed that in the past the only organizations ready and willing to perform these services were the producer-controlled cooperative marketing association.

The evidence likewise showed a need for cooperative marketing association able to bargain for the sale of the milk of their members so as to enable producers to collectively and intelligently market their product. A cooperative which has no manufacturing facilities performs services which benefit the entire body of producers. A cooperative marketing association enables producers to protect themselves against exploitation. If the cooperative is fostered so that it can bargain effectively, the selling conditions of non-members are improved accordingly. There is an analogy to the increased wage a union secures which raises the wage level of all workmen, whether members or not. Similarly, the improved conditions in the sale of milk, resulting from the efforts of a strong bargaining cooperative, are enjoyed by all producers, whether members of the cooperative or not.

A cooperative enables a group of producers to shift large volumes of milk from one outlet to another to meet the demands of the market. Without cooperation, there is a blind rush to market all milk as fluid milk. A cooperative marketing association leads to an orderly market, i.e., the shipment of fluid milk sufficient to meet its needs and intelligent disposition of surplus. The orderly market thus attainable by perfect cooperation of all producers, is attainable in part

ien part cooperation exists. Blind shipping, resulting in ernate stuffing and starving markets, hurts all producers. derly shipping of a large volume of milk through intelli- nt cooperative selling gives all producers a better oppor- nity to market their product.

These services which cooperatives perform in finding a rket for milk, in standing by ready to handle surplus, in ing willing to close manufacturing plants when their milk needed for the fluid market, are essential services, if any lk control order is going to work. They are the services ich cooperatives must show themselves able and willing perform before they become entitled to receive these pay- nts under the order. They are the services which benefit od ers as a whole.

It costs cooperatives money to perform these services ich benefit the market. The Secretary was directed to ich benefit the market. The Secretary was directed by tute to encourage cooperatives. Charging the expense of ese services which cooperatives perform to the market as whole is the surest way to encourage producer-controlled operatives. This is particularly true when numerous gislative investigations have pointed out that the develop- nt of cooperatives would promote more efficient methods marketing.

With all of this evidence before the Secretary, he was stified in authorizing these cooperative payments where e cooperatives have met the qualifications set forth in the der.

In the absence of any provision in the order to compen- te the cooperatives for these services which they render d which benefit the entire body of all producers, the ex- nses of the cooperative in performing these services uld have to be borne by its members alone and cast the

The lower returns which members of cooperatives would receive if they had to bear the entire expense of these market-wide services would eventially lead to a disintegration of cooperatives. Members of cooperatives are not going to continue as members if they alone have to bear the expense of these services. The services cannot be continued unless cooperatives continue. The evidence before the Secretary showed that the amounts of these payments specified in the order were reasonable compensation for the expenses thus incurred in performing the various services. burden of surplus upon a part instead of the whole industry.

C. ACTICLE VII, SEC. 5 OF THE ORDER IS AUTHORIZED BY THE PROVISIONS OF THE ACT.

Three things are, therefore, apparent. First, that a distribution of these expenses throughout the entire body of all producers is necessary to equitably adjust among producers and cooperatives the value of the milk handled or produced by them. Second, the distribution of these expenses over the entire body of producers is necessary to make the order workable. Third, the payments are necessary to give cooperatives the encouragement which Congress directed they should have. Under these circumstances, the payments are authorized by at least two provisions of the statute.

Section 608 (C) (5-b) (II) provides that an order may provide for the payment to all producers and associations of producers delivering milk to all handlers, of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered; subject, in either case, only to * * * (d) a further adjustment, equitably to apportion the total value

of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.

The payment of these cooperative expenses for the services rendered to the market comes out of the Producers' Settlement Fund and is, therefore, an adjustment which equitably apportions the total value of the milk among producers and cooperatives.

Under Section 608-c (7-d) an order may contain a provision "incidental to, and not inconsistent with, the terms and conditions specified in subsections 5, 6 and 7, and necessary to effectuate the other provisions of the order."

The evidence before the Secretary which has been described above amply justifies the conclusion that the maintenance of cooperatives to bargain for milk and to take care of surplus was necessary to maintain an orderly market, without which a marketing order could not work, and to assure producers the greatest possible return for their milk.

Section 610, Subd. (b) of Title 7, provides:

> "The Secretary in the administration of this chapter shall accord such recognition and encouragement to producer-controlled cooperative associations as will be in harmony with the policy towards cooperative associations set forth in existing acts of Congress and as will tend to promote efficient methods of marketing and distribution."

This section is a recognition by Congress of the value of cooperative associations in any marketing program. The encouragement of cooperatives by virtue of these payments is the declared policy of Congress, and the evidence shows that such encouragement will promote efficient methods of marketing and distribution of milk. Therefore, the provisions of the order authorizing these payments are justified

by the language of 608-(c) (7-d), wherein an order issued by the Secretary may contain an incidental provision necessary to effectuate the other provisions of the order.

Ordinary business corporations are not eligible to receive these payments. The evidence before the Secretary did not show that such corporations performed any service for the market as a whole which would entitle them to receive any such payments. Any argument that these payments constitute preferential treatment of cooperatives over business corporations has been answered in Point II of this brief. Such treatment is justified by the fundamental differences between a cooperative and a business corporation, particularly when viewed in the light of the evidence before the Secretary.

These payments to cooperatives do not deprive any persons of their property without due process of law. The payments come out of the producers' settlement fund which is set up to equalize the burden of surplus. Producers whose milk is used in the low priced manufacturing class receive enough from the fund to equalize the prices they receive with the prices received by producers whose milk is used in the high priced fluid and cream classes. The payments to cooperatives for their expenses in performing services to handle and dispose of surplus are an integral part of the equalization plan. These payments stand on the same footing as payments to producers whose milk is used in the low priced class. If the operation of the equalization plan does not deprive any person of his property without due process of law, payments to cooperatives which are a necessary part of that plan likewise do not deprive any person of his property without due process of law.

We submit, therefore, that these cooperative payments are not only justified by the terms of the order but they are amply justified by the evidence.

* * * * * * * * *

V.

The decree appealed from should be reversed as to all appellants.

The Court is relieved of the necessity of determining whether or not the Dairymen's League could maintain an independent action to compel these defendants to comply with the Order. The League did not force its way into the action. It came in following the suggestion of the Court and at the invitation of the Government. The defendants did not object to the intervention and conceded that the League had to make no proof other than the proof offered by the Government (see original transcript, page 1525). The Trial Court expressly stated that the League could offer no proof other than its corporate status, and that that was admitted. The purpose of intervention as appears in the original transcript was to facilitate the proof upon the trial. It is obvious from reading pages 4 to 11 and 1515 to 1525 of the original transcript that the League's complaint was to stand or fall with the Government's complaint.

The Trial Court has awarded costs to the defendants against the League and the Bargaining Agency. It has improperly made findings of fact and conclusions of law which are prejudicial to the League and the Bargaining Agency. In view of the nature of the intervention and the concessions of the parties upon the trial, a reversal of the decree in the Government's appeal should carry with it a reversal of the decree to all parties. The opinion of the Trial Court and the findings and conclusions which were made clearly show that the dismissal of the League's complaint was solely that the Order was invalid and the Act unconstitutional and upon no other grounds.

Under Point II of our brief we have shown that the findings of fact and conclusions of law relating to the alleged conspiracy and monopoly were unsupported by the evidence. We ask the Court to disapprove of those findings and conclusions.

CONCLUSION.

For the foregoing reasons, the decree of the lower court dismissing the bill should be reversed.

Respectfully submitted,

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APPENDIX A

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

Division of Marketing and Marketing Agreements

ANNOTATED COMPILATION
OF
AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

Reenacting, Amending, and Supplementing the Agricultural Adjustment Act, as Amended

PREFATORY NOTE

This compilation is intended to indicate the present status of legislation by Congress relating to marketing agreements and orders regulating the handling of agricultural commodities in interstate and foreign commerce. The Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public, No. 137—75th Congress—Chap. 296, 1st Session), reenacted and amended certain provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders. Related legislation enacted prior to June 3, 1937, is given in the compilation known as "Annotated Compilation of the Agricultural Adjustment Act, as Amended, and Acts Relating Thereto at the Close of the First Session of the Seventy-fourth Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

Throughout the text of this compilation, bold face type is used for the language of the Agricultural Marketing Agreement Act of 1937; light face type is used for the language

of the Agricultural Adjustment Act, as amended, as reenacted by the Agricultural Marketing Agreement Act of 1937; italics are used for amendments made by section 2 of the Agricultural Marketing Agreement Act of 1937 to the Agricultural Adjustment Act, as amended.

The provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are not set out haec verba. They are, however, incorporated in the body of the provisions of the Agricultural Adjustment Act, as amended, which they amend. References to the amendatory provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are contained in the annotations.

ANNOTATED COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 RE-ENACTING, AMENDING AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED [1]

AN ACT

To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency);

Declaration

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of famers and destroys the value of agricultural assets which support the national credit structure and that these conditions effect transactions in agri-

[1] For annotations to the Agricultural Adjustment Act, as amended; for provisions of that act not reenacted by the provisions of the Agriculture Marketing Agreement Act of 1937; and for other acts of Congress relating both to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 see "Annotated Compilation of Agricultural Adjustment Act as Amended and Acts Relating Thereto at the Close of the First Session of the 74th Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

cultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.[2]

(b) Section 2 (relating to declaration of policy);

Declaration of Policy.

SEC. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such *orderly marketing conditions for agricultural commodities in interstate commerce as will establish*[3] prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the prewar period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and

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[2] As amended by sec. 2 (a) of the Agricultural Marketing Agreement Act of 1937. The text of sec. 1 of the Agricultural Adjustment Act, as amended, was as follows:

"DECLARATION OF EMERGENCY

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of comodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agriculture commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

[3] The italicized words were substituted, by sec. 2 (b) of the Agriculture Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish".

potatoes shall be the pre-war period, August 1909-July 1914. the case of tobacco and potatoes, the base period shall be the postwar period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement);

SEC. 8a (5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forefeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating [4] any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the

[4] The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: "the provisions of this section, or of".

United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements);

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directy burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be

deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders);

Orders

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

Commodities to which Applicable

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning) soybeans and naval stores as included in the Navel Stores Act and standards established thereunder (including refined or partially refined oleoresin).

Notice and Hearing

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance to such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

Terms—Milk and its Products

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their *marketings*[5] of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing

[5] The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5) for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefore from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract be-

tween the association and its producers: *Provided,* That it shall not sell milk or its products to an handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

Terms—Other Commodities

(6) In the case of fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size,

or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts [6] sold by such producers in such prior period as the Secretary determines to be representive, or upon the current *quantities available for sale by* [7] such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be apportioned equally among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof,

[6] The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.

[7] The Italicized words were substituted, by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the esablishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

Terms Common To All Orders

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Provided that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provide in such order.

(C) providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6) and (7) and necessary to affectuate the other provisions of such order.

Orders With Marketing Agreement

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be ap-

proved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

Orders With or Without Marketing Agreement

(9) Any order issued pursuant to the section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such represenative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity

sold within the marketing area specified in such marketing agreement or order.

Manner or Regulation and Applicability

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the adversing of any commodity or product covered by such marketing agreement.

Regional Application

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectiyely carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so

far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

Cooperative Association Representation

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contact with, such cooperative association of producers.

Retailer and Producer Exemption

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

Violation of Order

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than $50

or more than $500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

Petition by Handler and Review

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columba) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with direc-

tions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title, except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

Termination of Orders and Marketing Agreements

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effctuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: *Provided,* That such majority have during such rep-

resentative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

Provisions Applicable to Amendments

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8e, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8e shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price

of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8e are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.[8]

Producer Referendum

(19) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this sub-

[8] This Italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

section shall be construed as limiting representation by cooperative associations as provided by subsection (12).[9]

(f) Section 8d (relating to books and records);

Books and Records

SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of

[9] This Italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

Determination of Base Period

SEC. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the

base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919–July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

Miscellaneous

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: Provided, That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (2)[10] Each order issued by the Secretary under this title shall provide that each handler subject thereto shall

[10] Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.

pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title.[11] Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal

[11] Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following: "including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto".

Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.[12]

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title, and to any persons subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be

[12] Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence: "The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes."

commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or

the District of Columbia. For the purpose of this Act (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.[13]

(i) Section 12 (a) and (c) (relating to appropriation and expense);

Appropriation

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus re-

[13] This italicized subsection was added by sec. 2 (i) of the Agricultural Marketing Agreement Act of 1937.

ductions [14] with respect to the dairy-and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000: Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

Separability of Provisions

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

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[14] Sec. 2 (j) of the Agricultural Marketing Agreement Act of 1937 deletes the words: "and production adjustments".

(k) Section 22 (relating to imports);

Imports

SEC. 22. (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any produce processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That

no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.[15]

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[15] Sec. 5 of Public, No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title", whereever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended,"; and by deleting the words "an adjustment", whereever they appeared, and inserting in lieu thereof the word "any".

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows:[16]

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and, with the consent of all parties shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona-fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until

[16] Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in footnotes 2 to 9 inclusive and 11 to 14 inclusive, supra.

approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937."

APPENDIX B

UNITED STATES
DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
Washington, D. C.

ORDER SERIES—ORDER NO. 27

(Issued by the Secretary of Agriculture, August 5, 1938)

Order of the Secretary of Agriculture issued pursuant to Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, regulating such handling of milk in the New York Metropolitan Marketing Area as is in interstate commerce, and as directly burdens, obstructs or affects interstate commerce.

Whereas, under the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture of the United States is empowered, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in such handling of any agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, under the terms and provisions of said act, the Secretary of Agriculture is empowered to issue orders applicable to processors, producers, associations of producers, and others engaged in the handling of any agricultural

commodity or product thereof specified in subsection (2) of section 8c, such orders to regulate only such handling of such agricultural commodity or product thereof as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, the Secretary of Agriculture, having reason to believe that the execution of a marketing agreement and the issuance of an order with respect to the handling of milk in the New York metropolitan marketing area, would tend to effectuate the declared policy of said act, gave, on the 29th day of April 1938, notice of public hearings to be held on a proposed marketing agreement and a proposed order, said hearings being held jointly with the Commissioner of Agriculture and Markets of the State of New York at Albany, New York, May 16, 1938; Malone, New York, May 17, 1938; Syracuse, New York, May 18, 1938; Elmira, New York, May 19, 1938; New York City, May 20, 24, 25, and 26, 1938; and Albany, New York, June 3, 4, and 7, 1938, and at said times and places all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order; and

Whereas, the Secretary of Agriculture has found and proclaimed the period August 1921–July 1929 to be the base period to be used in connection with ascertaining the purchasing power of milk produced for sale in the New York metropolitan marketing area; and

Whereas, the Secretary of Agriculture finds that a pro rata assessment on handlers at a rate not to exceed 2 cents per hundredweight of Class I, II-A, and II-B milk handled will provide funds necessary for the proper administration of this order; and

Whereas, the Secretary of Agriculture finds, upon the evidence introduced at the said public hearings:

1. That approximately one-third of the milk produced for sale in the marketing area is produced in States other than the State of New York; that approximately one-third of the milk produced in the State of New York for sale in the marketing area passes through other States on its way to be sold in the marketing area; and that milk produced in the State of New York for sale in the marketing area which does not pass through other States on its way to be sold in the marketing area is physically and inextricably intermingled with that milk which is produced outside the State of New York for sale in the marketing area or which is produced in the State of New York for sale in the marketing area but which passes through other States on its way to be sold in the marketing area; and that all milk which is produced for sale in the marketing area is handled in the current of interstate commerce or so as directly to burden, obstruct, or affect interstate commerce in milk and its products, except as such milk is regulated by an order of the Commissioner of Agriculture and Markets of the State of New York, to which this order is complementary;

2. That the prices calculated to give milk handled in the marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8e of the act are not reasonable in view of the available supplies of feeds, the price of feeds, and other economic conditions which affect the supply and demand for such milk, and that the minimum prices fixed in accordance with the method set forth in this order are such prices as will reflect such factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

3. That this order regulates the handling of milk in the same manner as and is applicable only to handlers defined in a marketing agreement upon which hearings have been held;

4. That the orderly marketing conditions for milk flowing into the New York metropolitan marketing area are so disrupted as to result in impairment of the purchasing power of such milk, and that the issuance of this order and all of its terms and conditions will tend to effectuate the declared policy of the act.

Now, therefore, the Secretary of Agriculture, pursuant to the authority vested in him by said act, hereby orders that such handling of milk produced for sale in the New York metropolitan marketing area as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof according to article X, be in conformity to and in compliance with the terms and conditions hereinafter set forth.

Article I—Definitions

Section 1. *Definitions.*—The following terms shall have the following meanings:

1. "Act" means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends certain provisions of Public No. 10, 73rd Congress, as amended.

2. "Secretary" means the Secretary of Agriculture of the United States.

3. "New York metropolitan milk marketing area" means the city of New York, and the counties of Nassau, Suffolk, and Westchester, all in the State of New York, and is hereafter called the "marketing area."

4. "Person" means any individual, partnership, corporation, association, or any other business unit.

5. "Producer" means any person who produces milk which is delivered to a handler at a plant which is approved by any health authority for the receiving of milk to be sold in the marketing area.

6. "Handler" means any person who engages in the handling of milk, or cream therefrom, which was received at a plant approved by any health authority for the receiving of milk to be sold in the marketing area, which handling is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce. This definition shall be deemed to include a cooperative association of producers with respect to any milk received from producers at any plant operated by such association or with respect to any milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association collects payment. This definition shall not be deemed to include any person who neither receives milk from producers nor handles milk which is sold as milk or cream in the marketing area.

7. "Market administrator" means the agency, which is described in article II, for the administration of this order.

ARTICLE II—MARKET ADMINISTRATOR

SECTION 1. *Selection, Removal and Bond.*—The agency for the administration of this order shall be a market administrator who shall be a person selected and subject to removal by the Secretary. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

SEC. 2. *Compensation.*—The market administrator shall be entitled to such reasonable compensation as shall be determined by the Secretary.

SEC. 3. *Powers.*—The market administrator shall have power:

1. To administer the terms and provisions hereof;

2. To receive, investigate and report to the Secretary complaints of violations of this order.

SEC. 4. *Duties.*—The market administrator, in addition to the duties hereinafter described, shall:

1. Keep such books and records as will clearly reflect the transactions provided for herein;

2. Submit his books and records to examination by the Secretary at any and all times;

3. Furnish such information and such verified reports as the Secretary may request;

4. Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not

(a) Made reports pursuant to section 3 of article V or

(b) Made payments required by sections 1 and 8 of article VII;

6. Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;

7. Pay out of the funds received pursuant to article VIII

(a) The cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties;

8. Maintain a main office and such branch offices as may be necessary.

SEC. 5. *Announcement of Prices.*—The market administrator shall publicly announce prices as follows:

1. Not later than the 25th day of each month, the Class I and Class II-A prices to be in effect for the following month, pursuant to section 1 of article IV.

2. Not later than the 5th day of each month, the prices effective for the preceding month for Classes II-B, III-A, III-B, III-C, III-D, IV-A and IV-B, pursuant to section 1 of article IV.

3. Not later than the 14th day of each month, the uniform price computed pursuant to section 2 of article VI.

ARTICLE III—CLASSIFICATION OF MILK

SECTION 1. *Basis of Classification.*—All milk received from producers by handlers shall be classified in the classes set forth in section 2 of this article in accordance with its utilization at, or movement from, the plant where received from producers, including members of any cooperative association; *Provided,* That if milk is moved as milk from any plant outside the marketing area where received from producers to a second plant outside the marketing area, classification of such milk at the first plant may be in accordance with its utilization at such second plant; and provided further that, if milk is moved as cream, plain condensed milk or homogenized mixtures from any plant outside the marketing area to any second plant, classification of such milk at the first plant may be in accordance with its utilization at such second plant.

Any utilization of milk claimed by a handler shall be subject to verification by the market administrator. Any claim by a handler of utilization of milk at the plant of any other person shall be accompanied by a complete statement of such utilization and written consent by such person for the

market administrator to verify such statement by an audit of such person's records.

Any milk or cream which is on hand at any plant at the end of any month shall be classified in accordance with the form in which it leaves, or is utilized at, such plant not later than the 8th day of the following month.

SEC. 2. *Classes of Utilization.*—The classes of utilization of milk shall be as follows:

1. Class I milk shall be all milk which leaves a plant as milk, chocolate milk, or any whole milk drink, and all milk the utilization of which is not established for classification in some other class named in this section, except that loss or waste of milk in the plant where received from producers, not to exceed 2 percent of the total quantity of milk received from producers, may be prorated to each class in the proportion which the milk in such class is of the total quantity of milk classified.

2. Class II-A milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cream, except as set forth in paragraphs 5 and 7 of this section.

3. Class II-B milk shall be all milk the butterfat from which leaves, or is on hand at, a plant in the form of plain condensed milk or, except as set forth in paragraph 6 of this section, frozen desserts or homogenized mixtures.

4. Class III-A milk shall be all milk the butterfat from which leaves, or is on hand at, a plant in the form of evaporated milk in hermetically-sealed cans, sweetened condensed milk, milk chocolate, milk powder, malted milk powder, or any cheese other than American Cheddar and cream cheese.

5. Class III-B milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cream which is subsequently held in a licensed cold storage warehouse for more than seven days at a temperature below zero degrees Fahrenheit.

6. Class III-C milk shall be all milk the butterfat from which leaves a plant in the form of frozen desserts or homogenized mixtures which were sold outside of New York City.

7. Class III-D milk shall be all milk the butterfat from which is delivered as cream to a purchaser, not a handler, outside the State of New York and outside any county in other States in which there is a plant which is approved by any health authority for the receiving of milk to be sold in the marketing area, also milk the butterfat from which leaves or is on hand at a plant in the form of cream cheese.

8. Class IV-A milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of butter.

9. Class IV-B milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of American Cheddar cheese.

Article IV—Minimum Prices

Section 1. *Class Prices.*—For milk containing 3.5 percent of butterfat received, during each month from producers or cooperative associations of producers at plants in the 201-210 mile zone, each handler shall pay per hundredweight not less than the prices set forth in this section. For milk containing more or less than 3.5 percent of butterfat or received from producers or cooperative associations of producers at plants in other zones, each handler shall pay per hundredweight not less than the prices set forth in this section plus or minus the differentials set forth in sections 2 and 3 of this article.

The minimum prices for Class I and Class II-A milk shall apply to all Class I and Class II-A milk which is sold in the marketing area or which passes through a plant in the marketing area. The minimum prices for milk in Classes II-B, III-A, III-B, III-C, III-D, IV-A, and IV-B shall apply to all milk of any handler in these classes unless such handler

has milk in Class I to which the minimum price is not applicable, in which event the minimum III-A, III-B, III-C, III-D, IV-A, and IV-B prices shall not apply to the percent of his milk, if any, in each of the said classes which is equal to the percent of his total milk received from producers to which the Class I price is not applicable.

Payment of the minimum prices for milk received direct from producers shall be in accordance with article VII. Any handler who purchases or receives milk from a cooperative association of producers which is also a handler shall pay such cooperative association in full for such milk at not less than the minimum prices applicable pursuant to this article.

1. For Class I milk the price during each month shall be as shown in the schedule below in this paragraph for the butter-price range in which falls the average, as determined by the market administrator, of the prices reported daily during the 60 days preceding the 25th day of the preceding month, by the United States Department of Agriculture, for 92-score butter at wholesale in the New York market.

Butter-price range	Class I price	
	April thru July	August thru March
Cents per pound	Dollars per cwt.	Dollars per cwt.
Under 20	1.80	2.05
20-24.9	2.00	2.25
25-29.9	2.20	2.45
30-34.9	2.20	2.65
35-39.9	2.40	2.65
40-44.9	2.60	2.85
45-49.9	2.80	3.05
Over 49.9	3.00	3.25

2. For Class II-A milk the price during each month shall be as shown in the schedule below in this paragraph for the butter-price range in which falls the average, as determined by the market administrator, or the prices reported daily during the 30 days preceding the 25th day of the preceding month, by the United States Department of Agriculture, for 92-score butter at wholesale in the New York market.

Butter-price range	Class II-A price		
	March thru July	August thru October	November thru February
Cents per pound	Dollars per cwt.	Dollars per cwt.	Dollars per cwt.
Under 20	1.30	1.35	1.50
20-24.9	1.50	1.55	1.70
25-29.9	1.70	1.75	1.90
30-34.9	1.85	1.90	2.05
35-39.9	2.00	2.05	2.20
40-44.9	2.15	2.20	2.35
45-49.9	2.30	2.35	2.50
Over 49.9	2.45	2.50	2.65

3. For Class II-B milk the price during each month shall be 10 cents higher than the Class III-A price.

4. For Class III-A milk the price during each month shall be 10 cents higher than the average, computed by the market administrator, of prices, as reported to the United States Department of Agriculture, paid during such month to farmers by each of the evaporated milk plants which are located at places listed in this paragraph and for which prices are reported: *Provided*, That in no event shall the Class III-A price be less than a price computed by the market administrator as follows: To the average price of 92-score butter at wholesale in the Chicago market for such

month, as reported by the United States Department of Agriculture, add 30 percent, multiply by 3.5, and add 7 cents.

Locations of Evaporated Milk Plants

Mt. Pleasant, Mich.; Sparta, Mich.; Hudson, Mich.; Wayland, Mich.; Coopersville, Mich.; Greenville, Wis.; Black Creek, Wis.; Orfordville, Wis.; Chilton, Wis.; Berlin, Wis.; Richland Center, Wis.; Oconomowoc, Wis.; Jefferson, Wis.; New Glarus, Wis.; Belleville, Wis.; New London, Wis.; Coldwater, Ohio; Delta, Ohio.

5. For Class III-B milk the price during each month shall be 20 cents higher than the Class IV-A price.

6. For Class III-C milk the price during each month shall be 10 cents higher than the Class IV-A price.

7. For Class III-D milk the price during each month shall be 7½ cents higher than the Class IV-A price.

8. For Class IV-A milk the price during each month shall be a price computed by the market administrator as follows: From the average of the highest prices reported daily during such month by the United States Department of Agriculture for 92-score butter at wholesale in the New York market, deduct 4 cents, add 20 percent, and multiply by 3.5.

9. For Class IV-B milk the price during each month shall be a price computed by the market administrator as follows: Take the average of the weekly quotations, with differentials as indicated, from such of these markets as may issue quotations during such month; Single Daisies at Wisconsin Cheese Exchange, Plymouth, Wisconsin, plus one cent per pound; Twins at Gouverneur Cheese Board, Gouverneur, New York; Flats at Cuba Board of Trade, Cuba, New York; deduct 3 cents, and multiply by 9.45. In the

absence of any such quotation the price for the preceding month shall be effective.

SEC. 2. *Butterfat Differentials.*—The minimum prices for Classes I, II-A, II-B, III-B, III-C, and III-D milk set forth in section 1 of this article shall be subject to payment of butterfat differentials pursuant to section 3 of article VII. The minimum prices for Classes III-A and IV-A milk containing more than 3.5 percent butterfat shall be plus or minus, for each one-tenth of one percent butterfat, an amount equal to the respective prices set forth in paragraphs 4 and 8 of section 1 of this article, divided by 35. The minimum price for Class IV-B milk containing more or less than 3.5 percent butterfat shall be plus or minus, for each one-tenth of one percent butterfat, an amount equal to the price set forth in paragraph 9 of section 1 of this article divided by 9.45 and multiplied by 0.23.

SEC. 3. *Transportation Differentials.*—The market administrator shall from time to time publicly announce for each plant operated by each handler the freight zone set forth in the schedule below in this section according to the railway mileage distance from New York City of its nearest railway shipping point, or its highway mileage distance from New York City, if the latter is less than the former by 15 miles. Any such mileage distance shall be that recognized for rate-making purposes by the Interstate Commerce Commission. The minimum prices set forth in section 1 of this article shall be plus or minus the amounts set forth in the following schedule:

A Freight zone miles	B Class I, Cents per cwt.	C Classes II-A, II-B, III-B, and III-C, Cents per cwt.	D Class III-A, Cents per cwt.
1-10			
11-20	+15	+8	+4
21-25	+14	+8	+4
26-30	+13	+8	+4
31-40	+13	+7	+4
41-50	+13	+7	+4
51-60	+10.5	+7	+4
61-70	+10.5	+6	+3
71-75	+9.5	+6	+3
76-80	+8	+6	+3
81-90	+8	+5	+3
91-100	+8	+5	+3
101-110	+7	+5	+3
111-120	+7	+4	+2
121-125	+6	+4	+2
126-130	+5	+4	+2
131-140	+5	+3	+2
141-150	+5	+3	+2
151-160	+3.5	+3	+2
161-170	+2.5	+2	+1
171-175	+2.5	+2	+1
176-180	+1.5	+2	+1
181-190	+1.5	+1	+1
191-200	+1.5	+1	+1
201-210	0.0	+1	+1
211-220	0.0	0	0
221-225	−1	0	0
226-230	−1	0	0
231-240	−1	−1	0
241-250	−2	−1	0
251-260	−2	−1	0
261-270	−3.5	−2	−1
271-275	−3.5	−2	−1
276-280	−3.5	−2	−1
281-290	−3.5	−3	−1
291-300	−4.5	−3	−1
301-310	−5.5	−3	−1
	−5.5	−4	−2

A	B	C	D
Freight zone miles	Class I, Cents per cwt.	Classes II-A, II-B, III-B, and III-C, Cents per cwt.	Class III-A, Cents per cwt.
311-320	—5.5	—4	—2
321-325	—7	—4	—2
326-330	—7	—5	—2
331-340	—7	—5	—2
341-350	—8	—5	—2
351-360	—8	—6	—3
361-370	—8	—6	—3
371-375	—9	—6	—3
376-380	—9	—7	—3
381-390	—9	—7	—3
391-400	—9	—7	—3
401-410	—10.	—8	—4
411-420	—10.	—8	—4
421-425	—10.5	—8	—4
426-430	—10.5	—9	—4
431-440	—11.5	—9	—4
441-450	—11.5	—9	—4
451-460	—11.5	—10	—5
461-470	—12.5	—10	—5
471-475	—12.5	—10	—5
476-480	—12.5	—11	—5
481-490	—14	—11	—5
491-500	—14	—11	—5

Article V—Reports of Handlers

Section 1. *Preliminary Monthly Reports.*—On or before the 23rd day of each month each handler shall, when requested by the market administrator, report to the market administrator in the manner and form prescribed by him: (a) The total quantity of milk received during the first twenty days of such month from producers, and (b) the utilization of such milk in the several classes set forth in article III.

Sec. 2. *Reports of Deliveries Per Day Per Producer.*—Each handler shall, upon request of the market administra-

tor given not less than two weeks in advance, report the average deliveries of milk per day per producer during a specified period of time.

SEC. 3. *Final Monthly Reports.*—On or before the 10th day of each month each handler shall report to the market administrator, in the manner and on forms prescribed by the market administrator, with respect to milk received at each plant during the preceding month:

1. The total quantity of milk, with the average butterfat content thereof, received from producers, from other plants, from such handler's own farm, and from other handlers;

2. The total quantity of milk and of each product of milk moved out of such plant during such month or on hand at such plant at the end of such month, the butterfat content of each product; and the destination of any milk which moved out of such plant;

3. If classification of any milk is claimed by such handler on the basis of utilization at some other plant, the utilization of such milk, together with written consent for verification by audit thereof signed by the operator, if not a handler, of the other plant, and

4. The computation, pursuant to section 1 of article VI of such handler's net pool obligation.

SEC. 4. *Verification of Reports and Payments.*—The market administrator shall promptly verify all reports and payments of each handler by audit of such handler's records. Each handler shall, during the usual hours of business, make available to the market administrator or his representative such of his records and facilities as will enable the market administrator to:

1. Verify the receipts and utilization of all milk required to be reported pursuant to this article, and, in case of errors or omissions, ascertain the correct figures;

2. Weigh, sample, and test for butterfat content the milk received from producers and any product of milk upon which classification depends; and

3. Verify the payments to producers prescribed in article VII.

ARTICLE VI—DETERMINATION OF UNIFORM PRICE

SECTION 1. *Net Pool Obligations of Handlers.*—The net pool obligation of any handler for milk received from producers during each month shall be a sum of money computed for such month as follows:

1. Determine the total quantity of milk in each class at each plant;

2. Subtract from the quantity of milk in each class the quantity of such milk received from other plants or from other handlers;

3. Subtract pro rata out of each class the quantity of milk received from the handler's own farm;

4. Subtract from the remaining quantity of milk in each class, the quantity of each to which the prices in section 1 of article IV do not apply, which result shall be known as the "net pooled milk" in each class;

5. Multiply the total quantity of net pooled milk in each class, at all plants of the handler combined, by the respective class prices set forth in section 1 of article IV and add together the resulting sums;

6. Deduct, in the case of each plant where the average butterfat content of all milk received from producers is in excess of 3.5 percent and add in the case of each plant where the average butterfat content of all milk received from producers is less and 3.5 percent, an amount equal to the difference between the total value of the butterfat differentials on net pooled milk in Classes III-A, IV-A, and IV-B at the rates set forth in section 2 of article IV for such milk and

the total value of the butterfat differentials on such milk as set forth in section 3 of article VII;

7. Deduct, in the case of each plant nearer New York City than the 201-210 mile zone, and add, in the case of each plant farther from New York City than the 201-210 mile zone an amount equal to the difference between the sum of the respective transportation differentials, as set forth in section 3 of article IV, on all net pooled milk in Classes II-A, II-B, III-A, III-B, and III-C and the sum obtained by applying the appropriate zone differential set forth in column B of the schedule in section 3 of article IV to the total net pooled milk at each plant in Classes II-A, II-B, III-A, IIIB, III-C, III-D, IV-A and IV-B.

8. Deduct 20 cents per hundredweight for all net pooled milk received from producers at plants in the counties or portions of counties listed below in this section. The result thus obtained shall be known as the "handler's net pool obligation."

New Jersey counties

Hunterdon	Union	Sussex
Somerset	Morris	Passaic
Essex	Warren	

New York counties

Columbia	Orange	Westchester
Dutches	Putnam	
Nassau	Suffolk	

Towns in Ulster County, New York

Marbletown	Rosendale	Gardiner
Hurley	Esopus	Plattekill
Kingstown	New Paltz	Marlborough
Ulster	Lloyd	Shawangunk

Connecticut	Massachusetts
Litchfield County	Berkshire County

SEC. 2. *Computation of the Uniform Price.*—The market administrator shall, on or before the 14th day of each month, audit for mathematical correctness and obvious errors the final report submitted for the preceding month by each handler and, on the 14th day of such month, compute from all of such corrected reports the uniform price in the following manner:

1. Combine into one total the net pool obligations of all handlers;

2. Subtract the total of payments required to be made for such month by section 5 of article VII and the total of payments claimed pursuant to section 6 of article VII;

3. Add the amount of cash in the producer settlement fund;

4. Divide the result by the total quantity of milk represented in the sum obtained pursuant to paragraph 1 of this section; and

5. Substract not less than 4 cents nor more than 5 cents to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers. This result shall be known as the uniform price for such month for milk containing 3.5 percent butterfat received from producers at plants in the 20-210 mile zone.

Article VII—Payments to Producers

SECTION 1. *Time of Payment.*—On or before the 25th day of each month each handler which is not a cooperative association of producers shall make payment to each producer for all milk delivered by such producer at any plant during the preceding month at not less than the uniform price, subject to differentials set forth in sections 2 and 3 of this article. If, however, the net pooled milk in all classes at all plants of such handler is less than the total milk he received from producers and he does not pay the uniform price for

all milk received from producers, such handler shall pay each producer the uniform price on such producer's pro rata share of the net pooled milk at all of his plants. Each handler shall give each producer a clear statement of the percentage of such producer's milk which was paid for at the uniform price and furnish a copy of such statement to the market administrator at the time payment is made.

SEC. 2. *Transportation and Location Differentials.*—The uniform price shall be plus or minus the differential shown in column B of the schedule contained in section 3 of article IV for the zone of the plant as established for the purposes of section 3 of Article IV, plus 25 cents in the case of plants located in the counties listed in paragraph 8 of section 1 of article VI.

SEC. 3. *Butterfat Differential.*—The uniform price shall be plus or minus, as the case may be, 4 cents per hundredweight for each one-tenth of one percent above or below 3.5 percent of average butterfat content of milk delivered by any producer during any month.

SEC. 4. *Grade A Premiums.*—In addition to the uniform price and all other payments required pursuant to this article, each handler shall pay for milk which is qualified under the New York City Department of Health requirements for sale as Grade A milk and which is delivered to a plant similarly qualified, an amount per hundredweight equivalent to the following differentials on that Class I milk which such handler sold in the marketing area as Grade A milk;

Butterfat content	Bacteria colonies per c. c.		
	10,000 or less	10,000 to 25,000	Over 25,000
	Cents per cwt.	Cents per cwt.	Cents per cwt.
Percent			
3.7	60	42	5
3.8	66	48	7.5
3.9	72	54	10
4.0 and above	78	60	12

SEC. 5. *Payments to Cooperative Associations.*—Any cooperative association of producers may apply to the Secretary for a determination of its qualifications to receive payments pursuant to this section by reason of its having and exercising full authority in the sale of the milk of its members, using its best efforts to supply, in times of short supply, Class I milk to the marketing area and to secure utilization of milk, in times of long supply, in a manner to assure the greatest possible returns to all producers, and having its entire activities under the control of its members. After such determination, the cooperative association of producers shall be entitled to continue to receive such payment until it has been disqualified by the Secretary, after hearing, for failure to exercise the authority and to perform the functions upon which such determination was based.

The market administrator shall make the payments authorized by this section, or issue credit therefor, out of the producer settlement fund on or before the 25th day of each month, subject to verification of the reports upon which such payment is based. Such payments shall be made to each cooperative association of producers under the following conditions and at the following rates:

1. One cent per hundredweight of net pooled milk at any handler's plant which was caused to be delivered from its members by such association and on which such handler has made the reports and payments required by this order.

2. Except as set forth in paragraph 3 of this section, 2½ cents per hundredweight of net pooled milk at plants of other handlers which was reported and collected for by such association.

3. Five cents per hundredweight of net pooled milk at plants operated by such association and, if, in addition to the other qualifiations, such association has been determin-

ed by the Secretary to have sufficient plant capacity to receive all the milk of producers who are members and to be willing and able to receive milk from producers not members, 5 cents per hundredweight of any net pooled milk which was caused by it to be delivered to any other handler and which is reported and collected for by such association.

SEC. 6. *Market Service Payment.*—The market adminstrator shall pay out of the producer settlement fund to any handler immediately after audit of claim for such payment made on forms supplied by the market administrator:

1. With respect to milk received from producers at a plant operated by such handler equipped only for the receiving and shipping of milk to the marketing area, which was, during any month except November or December, moved to a plant where it was utilized in Classes II-A, II-B, III-A, III-B, III-C, III-D, or, during the month of October, IV-A, and from which, if operated by such handler, no Class I milk was shipped to the marketing area during such month, 23 cents per hundredweight of milk so moved, plus 4 cents per hundredweight for the first five miles or fraction thereof, plus ¼ cent per hundredweight per mile for the next 20 miles, and plus 1/10th of 1 cent per hundredweight per additional mile, of the shortest highway distance between the two plants; and

2. Thirty cents per hundredweight of Class I milk sold during the months of November and December in the marketing area which was received from producers at a plant which is equiped for condensing or drying milk and from which, during the months of May and June preceding, in terms of equivalent of milk received at such plant, no milk in excess of 10 percent and no cream in excess of 50 percent was shipped to the marketing area.

SEC. 7. *Producer Settlement Fund.*—The market administrator shall establish and maintain a separate fund known

as "the producer settlement fund" into which he shall deposit all payments made by handlers pursuant to sections 8 and 10 of this article and out of which he shall make all payments to handlers pursuant to sections 6, 9 and 10 of this article, and to cooperative association of producers pursuant to section 5 of this article.

SEC. 8. *Payments to the Producer Settlement Fund.*—Each handler shall on or before the 18th day of each month pay to the market administrator for payment to producers through the producer settlement fund the amount by which his net pool obligation for the preceding month is greater than the amount obtained by multiplying the net pooled milk of such handler by the uniform price.

SEC. 9. *Payments Out of Producer Settlement Fund.*—On or before the 20th day of each month the market administrator shall remit to each handler for payment to producers the amount, if any, by which such handler's net pool obligation is less than the amount obtained by multiplying the net pooled milk of such handler by the uniform price. If at such time the balance in the producer settlement fund is insufficient to make all payments due to such handler, the market administrator shall reduce uniformly the payments made to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received the balance of such reduced payment from the market administrator shall be deemed to be in violation of section 1 of this article if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer settlement fund.

SEC. 10. *Adjustments of Errors in Payments.*—Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer settlement fund, the market admin-

istrator shall promptly bill such handler for any unpaid amount, and such handler shall, within five days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler the market administrator shall, within five days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of less than is required by this article, the handler shall make up such payment to the producer not later than the time of making payment next following such disclosure.

Article VIII—Expense of Administration

SECTION 1. *Payment by Handlers.*—As his pro rata share of the expense of administration hereof, each handler shall, on or before the 20th day of each month, pay to the market administrator a sum not exceeding 2 cents per hundredweight on the total quantity of milk which was received from producers at plants operated by such handler, directly or at the instance of a cooperative association of producers, and which was utilized in Classes I, II-A, and II-B, the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under any order issued by the Commissioner of Agriculture and Markets of the State of New York to which this order is complementary.

Article IX—Suspension, Termination and Liquidation

SECTION 1. *Continuing Obligation of Handlers.*—Unless otherwise provided by the Secretary in any notice of amendment, termination or suspension of any or all of the provisions hereof, such amendment, termination or suspension shall not (a) affect, waive, or terminate any right, duty,

obligation, or liability which shall have arisen or may thereafter arise in connection with any provision of this order; (b) release or waive any violation of this order occurring prior to the effective date of such amendment, termination or suspension; or (c) affect or impair any right or remedies of the Secretary or of any other person with respect to any such violations.

SEC. 2. *Continuing Power and Duty.*—If, upon the termination or suspension of this order, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, or by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such termination or suspension.

The market administrator shall (a) continue in such capacity until discharged by the Secretary; (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, to such person as the Secretary shall direct; and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator pursuant to this order.

SEC. 3. *Liquidation.*—Upon the termination or suspension of this order, the market administrator shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such termination or suspension.

Any funds collected for expenses, pursuant to the provisions of this order, over and above the amounts necessary to meet outstanding obligations and the expenses necessar-

ily incurred by the market administrator in liquidating the business of the market administrator's office shall be distributed by the market administrator to handlers in an equitable manner.

Article X—Effective Time

SECTION 1. *Effective Time.*—This order shall become effective after the issuance by the Commissioner of Agriculture and Markets of the State of New York of an order containing provisions similar to the provisions of this order and to which this order shall be complementary and on the first day of the month following, by more than three days, publication in the Federal Register by the Secretary of (a) his finding that the order is approved by more than two-thirds of the producers voting in a referendum, (b) a marketing agreement containing provisions similar to this order approved by him and signed by handlers of more than 50 percent of the milk sold in the marketing area, or, his determination approved by the President that the failure or refusal of handlers to sign tends to prevent the effectuation of the declared policy of the act and that the issuance of the order is the only practical means of advancing the interests of producers pursuant to such declared policy of the act.

IN WITNESS WHEREOF, I, H. A. WALLACE, Secretary of Agriculture of the United States, have executed in duplicate and issued this order to become (Seal) effective in accordance with article X hereof, and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington District of Columbia, this 5th day of August, 1938.

H. A. WALLACE,
Secretary of Agriculture.

APPENDIX C

ROGERS-ALLEN LAW
LAWS OF NEW YORK, 1937
* CHAPTER 383

AN ACT to amend the agriculture and markets law, in relation to bargaining agencies, orders and marketing agreement.

(Art. 21 amended: new §§ 258-k to 258-n added.)

Became a law May 19, 1937, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article twenty-one of chapter forty-eight of the laws of nineteen hundred and twenty-two, re-entitled by chapter two hundred and seven of the laws of nineteen hundred twenty-seven "An act in relation to agriculture and markets, constituting chapter sixty-nine of the consolidated laws," as added by chapter one hundred twenty-six of the laws of nineteen hundred thirty-four, and as amended, is hereby amended by adding thereto four new sections, to be sections two hundred fifty-eight-k, two hundred fifty-eight-l, two hundred fifty-eight-m and two hundred fifty-eight-n to read, respectively, as follows:

§ 258-k. *Declaration of Policy.* It is hereby declared that the dairy industry is a paramount agricultural industry of this state and the normal processes of producing and marketing milk have become an enterprise of vast economic importance to the state and of vital interest to the consuming public which ought to be safeguarded and protected in

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* Enacted after repeal of milk control laws.

the public interest; that it is the policy of this state to promote, foster and encourage the intelligent and orderly marketing of milk through producer owned and controlled cooperative associations; that unfair, unjust and destructive demoralizing trade practices have been and are likely to be carried on in the production, sale, processing and distribution of milk and that it is a matter of public interest and for the public welfare for the state to promote the orderly exchange of commodities and in cooperation with the federal government, in its regulation of interstate commerce, to take such steps as are necessary and advisable to protect the dairy industry and insure an adequate supply of milk for the inhabitants of this state.

§ 258-l. *Producers' bargaining agencies and distributors' bargaining agencies.*

(a) Incorporated producers' associations operated under and subject to the cooperative corporations law of this state, or similar laws of another state and organized and controlled by milk producers, may establish producers' bargaining agencies for the various production areas of the state designated by the commissioner. Cooperative corporations similarly incorporated hereafter and owned and controlled by producers shall be entitled to use and participate in such a bargaining agency and be represented by it in order that producers not now represented by a co-operative association may be entitled to the benefits of this act.

The voting power of each association participating in such an agency shall be on the basis of one vote for each one hundred producers under contract with such association for the marketing of their milk within such marketing area, and in case of an association with less than one hundred producers under contract with it, a fractional vote in proportion to the number of such producers. Only active contracts shall be considered.

The purpose of a producers' bargaining agency is to negotiate agreements or the basis of orders in the respective marketing areas for presentation to the commissioner for his consideration and approval, as provided in section two hundred and fifty-eight-m herein. A producers' bargaining agency shall be authorized to negotiate with a distributors' bargaining agency in such marketing area in regard to arrangements or agreements to be presented to the commissioner as a basis of marketing agreements or orders pursuant to said section two hundred and fifty-eight-m,

Each association upon joining or employing the producers' bargaining agency shall file with it a certified copy of its certificate of incorporation, its by-laws, copies of form of contracts with its producers and a certified statement of the number of such contracts which are in force.

A producers' bargaining agency may appear before and negotiate with the commissioner in regard to marketing agreements or orders, as provided in section two hundred and fifty-eight-m herein.

It shall be lawful for such producers' bargaining agency to act as a common marketing agency for the various co-operative associations of producers which it represents and such cooperative associations as may make contracts with each other and with such producers' agency for such purpose and for the collective processing, preparing for market, handling and marketing of the products of such associations and for effectuating the purposes of this act. In order to carry out and effectuate such purposes, contracts and agreements may be made pursuant to section twenty-five of the co-operative corporations law and as to interstate commerce pursuant to act of congress of February eighteenth, nineteen hundred twenty-two, entitled, "An act to authorize association of producers of agricultural products,"

(b) A distributors' bargaining agency may be organized by the distributors in a marketing area. The voting power of each distributor in such bargaining agency shall be in proportion to the volume of milk equivalent distributed by him in such area in form of milk and cream. The amount of such volume shall be determined by that distributed during the preceding year as reported to the commissioner. In the New York metropolitan milk marketing area the voting power of each distributor shall be on the basis of one vote for each ten million pounds of milk or milk equivalent distributed in such market during the preceding year and in case of a distributor handling a less quantity of milk, a proportionate fractional vote. In other marketing areas the voting basis shall be one vote for each one hundred thousand pounds distributed during the preceding year in such market with a proportionate fractional vote in case of distributors handling a less quantity of milk. The purpose of distributors' bargaining agencies is to negotiate with producers' bargaining agencies as to the agreements or the basis of orders in the respective marketing areas for presentation to the commissioner for his consideration and approval, as provided in section two hundred figty-eight-m herein.

A distributors' bargaining agency may appear before and negotiate with the commissioner in regard to marketing agreements or orders, as provided in section two hundred fifty-eight-m herein.

Producers' bargaining agencies and distributors' bargaining agencies may also meet and negotiate in order to carry out the purposes of this act and subject to the approval of the commissioner as provided in section two hundred fifty-eight-m, may make marketing agreements with each other and with cooperative associations in relation to the marketing of milk which may be handled or distributed

in more than one marketing area. Such agencies may also meet and negotiate and take such reasonable measures as are necessary and advisable to cooperate with the commissioner and legally constituted authorities of other states and of the United States with respect to the handling and control of milk handled in interstate commerce and carry out and effectuate the provisions of section two hundred and fifty-eight-m.

Except as specifically provided in section two hundred and fifty-eight-m, the activities and operations of producers' bargaining agencies and distributors' bargaining agencies and of the constituent members thereof, and contracts, agreements or arrangements made by them, pursuant to the provisions of this subdivision, and of section two hundred and fifty-eight-m hereof, shall not be deemed or construed to be conspiracies, combinations, contracts or agreements in restraint of trade or commerce or an illegal monopoly.

"Milk production area" as used in this section means that territory in which is located those dairy farms which have been approved by the board or boards of health having jurisdiction in the marketing area in which the milk from such dairy farms has been distributed during at least a portion of either of the preceding two years, together with such other dairy farms as may hereafter be so approved and which are located within the confines of such area as determined by the commissioner.

§ 258-m. *Orders fixing prices for milk and marketing agreements.* 1. Upon the petition of a producers' bargaining agency of the production area supplying a marketing area, such agency representing at least thirty-five per centum of the producers of milk therein, alleging the existence of conditions so affecting the orderly marketing of

milk in such area that public interest requires regulation of prices of milk in such area in order that the public policy declared in section two hundred and fifty-eight-k of this chapter shall be effective, it shall be the duty of the commissioner to call a public hearing for the consideration of said petition and to give notice thereof by advertising such call in such newspaper or newspapers of general circulation in such marketing area as the commissioner deems advisable. Such notice shall specify a time not less than ten days after the date thereof and a place within the marketing area at which the hearing will be held and at which the applicants and other persons, including producers, distributors and consumers and associations thereof may be heard. If after such hearing the commissioner shall find, either upon the testimony given at the hearing or upon information concerning conditions existing in the milk industry in such marketing area, which the commissioner has otherwise obtained, that conditions exist so affecting the orderly marketing of milk in such area, that public interest requires that the public policy declared in section two hundred and fifty-eight-k of this chapter shall be effective and that it is favored by at least seventy-five per centum of the producers of milk produced in the production area for said marketing area, he may by order fix and determine for such marketing area fair and equitable minimum prices to be paid to producers. Such price fixing order or orders shall be rescinded effective at the end of the current month after a public hearing whenever the commissioner shall find either that such conditions have ceased to exist or that such termination is favored by at least thirty-five per centum of the producers of milk handled within such market.

2. The commissioner may, from time to time upon like petition, during the existence of such conditions revise the prices so fixed, after holding a hearing thereon.

3. Before fixing any prices pursuant to the provisions of the two preceding paragraphs, the commissioner shall investigate what are reasonable costs and charges for producing, hauling, handling, processing and/or other services performed in respect of milk and what prices for milk in the market or markets affected by such prices and under varying conditions will be most in the public interest. The commissioner shall take into consideration the balance between production and consumption of milk, the cost of production and distribution, including compliance with all sanitary regulations in force in the market or markets affected, the cost of feeding stuffs used in the production of milk, the supply of milk in such market and the purchasing power and welfare of the public. The commissioner shall fix prices to producers on the basis of the use thereof in the various classes, grades and forms. Any prices fixed or approved by the commissioner shall be deemed to be prima facie reasonable.

4. In determining the approval or request for an order as herein provided or the termination thereof on the part of producers the commissioner shall consider the approval, request or favor in respect thereto by any bona fide cooperative association of producers engaged in marketing milk within such marketing area as the approval, request or favor either of making an order or of termination thereof of the producers who are under contract with such cooperative association of producers.

5. Maketing agreements. It shall be lawful for a producers' bargaining agency of the production area supplying a marketing area and a distributors' bargaining agency for such marketing area to enter into marketing agreements as to the prices to be paid by distributors to producers for milk sold or otherwise utilized in said marketing area, as to rules and regulations covering the method of determining

the proportion of the product of the entire dairy herd of a producer which shall be accepted and paid for pursuant to such price or prices, as to be rasonable trade practices affecting the relations between producers and distributors in such market. Such agreement may also contain provisions for a committee to administer the provisions of said marketing agreement. No agreement, however, shall be effective until a copy thereof signed by all persons parties thereto shall have been filed with the commissioner.

If the commissioner shall have reason to believe that any such marketing agreement results in a monopoly or restraint of trade to such an extent that the price of milk is unduly enhanced by reason thereof, he shall serve upon the parties to such agreement a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing specifying a date and place, not less than thirty days after the service thereof, requiring the parties to such marketing agreement to show cause why an order should not be made directing them to cease and desist from such monopolization or restraint of trade. The parties so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given at such hearing shall be taken under such rules and regulations as the commissioner shall prescribe, reduced to writing and made a part of the record therein. If upon such hearing the commissioner shall be of the opinion that such marketing agreement results in monopoly or restraint of trade to such an extent that the price of milk in the marketing area affected by such agreement is unduly enhanced, he shall issue and cause to be served upon the parties to said agreement an order reciting the facts found by him and directing them to cease and desist from such undue enhancement of prices. If such order is not obeyed by the parties to such agreement, the

commissioner shall file with the attorney-general a certified copy of the order, evidence of such disobedience and all of the records in the proceeding, and the attorney-general may apply to the supreme court for an order or decree affirming, modifying or setting aside such order or for making such other order or decree as the court may deem equitable in the premises.

Upon application of the parties to said marketing agreement and after a hearing, as provided in subdivision one of this section, the commissioner may by order make the provisions of said marketing agreement, relative to prices to producers and other provisions thereof, effective as to all producers, distributors and handlers in said market notwithstanding that they may not have approved of said agreement if he shall find that the terms and conditions of said agreement are fair, equitable and in public interest, and that the agreement has been fairly entered into without fraud, that public interest so requires, in order to effectuate the declaration of policy contained in section two hundred fifty-eight-k of this chapter, that the proportion of the producers and distributors who have executed such agreement or shall have approved same upon the hearing is equal to that required for an order under subdivision one of this section, and further provided that the commissioner shall determine that the prices set forth in said marketing agreement are reasonable and proper prices, as required by this section for prices fixed by an order of the commissioner. Any order so issued shall terminate effective on the last day of the current month, and in the same manner and upon the same request after a hearing, as provided for the termination of an order in subdivision one of this section.

6. If approved by seventy-five per centum of the producers affected, any order or marketing agreement fixing

the price to producers under either subdivision one or subdivision five of this section for market or markets, may provide for an equalization of prices to all producers of the production area of the market affected so that each producer or co-operative association shall receive the same base price for all milk delivered subject to reasonable differentials for quality and location and for services.

In order to effect such equalization of prices to producers the commissioner shall require a monthly report from each dealer receiving milk from producers for such market showing the disposition of all milk handled by the reporting dealer in such market and shall thereafter require payment by each dealer, to a trust company designated as a fiscal agent by the commissioner, of any amount by which the sum otherwise due by such dealer to its producers in accordance with all the prices fixed by such order exceeds the equalized base price as determined by the commissioner from such reports, which amounts so paid to said fiscal agent, the commissioner shall direct it to pay to those dealers whose reports show that the base prices they will pay their producers in accordance with such order are less than the equalized base price as so determined by the commissioner, for repayment in turn by such dealers to their producers so as to bring all lower rates of payment up to the equalized base price. Such payments to said fiscal agents shall not be deemed to be included within the provisions of section two hundred fifty-eight-i of this chapter and shall not be deemed to be state funds.

The provisions of this subdivision shall not become operative as to the New York state metropolitan market production area, however, until pursuant to federal or state statutes, or by action of authorities duly constituted and authorized thereunder, prices to producers are so equalized

and made effective throughout all the production area of New York state metropolitan market area.

7. After the commissioner shall have fixed prices in any area or approved prices in a marketing agreement to be charged or paid for milk in any form included in the definition of milk as used in this article whether by class, grade or use, it shall be unlawful for a milk dealer to buy or offer to buy milk at any price less than such price or prices as shall be applicable to the particular transaction, and no method or device shall be lawful whereby milk is bought or sold or offered to be bought or sold at a price less than such price, or prices, as shall be applicable to the particular transaction, whether by a discount or rebate, or free service, or advertising allowance, or a combined price for such milk together with another commodity or commodities, or service or services, which is less than the aggregate of the prices for the milk and the price or prices for such other commodity or commodities, or service or services, when sold or offered for sale separately or otherwise.

8. It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this article respecting such milk so produced shall apply and the powers conferred by this article shall attach.

9. Any marketing agreement or order of the commissioner may provide for necessary deductions from payments to producers to provide for marketing services to them, including auditing of dealers' classifications and no marketing agreement or order shall prevent a cooperative association from blending as heretofore the proceeds of all sales and distributing to its producers the resultant blended

price subject to deductions and differentials as provided by its contracts with its producers, but no such cooperative association shall sell milk at prices lower than the prices fixed by the commissioner in an order for the markets affected.

10. "Distributor" as used in this and the preceding section means a milk dealer as defined in this article who delivers milk to stores and/or consumers within the marketing area, from a milk depot or milk plant owned and/or operated by such dealer.

§ 258-n. *Interstate and federal compacts* The commissioner is hereby authorized to confer with legally constituted authorities of other states and of the United States with respect to a uniform milk control with states and/or as between states and with the federal government in its control of prices of milk handled in interstate commerce, and may exercise his power hereunder to effect such uniform milk control. He may join with such other authorities federal and state in conducting joint investigations, holding joint hearing and issue joint or concurrent orders, or orders supplementary to those of the federal government, and shall have the power to employ or designate a joint agent or joint agencies to carry out and enforce such joint, concurrent or supplementary orders.

§ 2. This act shall take effect immediately.

APPENDIX D

CAPPER-VOLSTEAD ACT
Title 7 U. S. C. A., Sections 291-292

CHAPTER 12.—ASSOCIATIONS OF PRODUCERS OF AGRICULTURAL PRODUCTS

Sec. 291. Authorization of associations; powers generally.

Sec. 292. Monopolizing or restraining trade and unduly enhancing prices prohibited; remedy and procedure.

Section 291. *Authorization of associations; powers generally.* Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members. (Feb. 18, 1922, c. 57, § 1, 42 Stat. 388.)

§ 292. *Monopolizing or restraining trade and unduly enhancing prices prohibited; remedy and procedure.* If the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the assaciation an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agricul-

are shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof. (Feb. 18, 1922, c. 57, § 2, 42 Stat. 388.)

APPENDIX E

CLAYTON ACT

Title 15 U. S. C. A., Section 17

§ 17. *Antitrust laws not applicable to labor organizations.* The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agriculture, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. (Oct. 15, 1914, c. 323, § 6, 38 Stat. 731.)

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